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CUMULATIVE SUPPLEMENT
TO
MISSISSIPPI CODE
1972 ANNOTATED

Issued September, 2012

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ENACTED THROUGH 2012 REGULAR SESSION**

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.



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PUBLISHER'S FOREWORD

Statutes

The 2012 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2012 Regular Session.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

- Southern Reporter, 3rd Series
- United States Supreme Court Reports
- Supreme Court Reporter
- United States Supreme Court Reports, Lawyers' Edition, 2nd Series
- Federal Reporter, 3rd Series
- Federal Supplement, 2nd Series
- Federal Rules Decisions
- Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

- American Law Reports, 6th Series
- American Law Reports, Federal Series
- Mississippi College Law Review
- Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

PUBLISHER'S FOREWORD

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2012 Regular Session.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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September 2012

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SCHEDULE OF NEW SECTIONS

Added in this Supplement

TITLE 75. REGULATION OF TRADE, COMMERCE AND INVESTMENTS

CHAPTER 7. Uniform Commercial Code—Documents of Title

PART 1. General

SEC.

75-7-106. Control of electronic document of title.

PART 7. Transitional Rules

75-7-701. Transitional rules.

75-9-309. Security interest perfected upon attachment.

MISSISSIPPI CODE 1972

ANNOTATED

VOLUME SIXTEEN A

TITLE 75

REGULATION OF TRADE, COMMERCE AND INVESTMENTS

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Uniform Commercial Code—Bank Deposits and Collections

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PART 1.

GENERAL PROVISIONS AND DEFINITIONS.

| | |
|-----------|---------------------------------------|
| SEC. | |
| 75-4-104. | Definitions and index of definitions. |
| 75-4-105. | Definitions of types of banks. |

§ 75-4-103. Variation by agreement; measure of damages; ac- tion constituting ordinary care.

JUDICIAL DECISIONS

| | |
|---|---|
| 6. Measure of damages. | fraudulently withdrawing money from a |
| Bank's sole obligation, absent bad faith | customer's account, is to make restitution. |
| in its handling of the matter of a teller | A bank fulfilled that obligation by |

promptly depositing the missing money, plus interest, to a customer's account, and the bank was not liable for punitive damages. *Wise v. Valley Bank*, 861 So. 2d 1029 (Miss. 2003).

Summary judgment on punitive damages issues in breach of contract action was inappropriate where the evidence was such that if the client's allegations about a particular conversation she had with the bank's branch manager were taken as true, then the branch manager's statements to the client would take on the appearance of an intentional, material misrepresentation and indicate the bank did not act in good faith in its investigation of an illegal withdrawal from the

client's savings account. *Wise v. Valley Bank*, — So. 2d —, 2003 Miss. LEXIS 231 (Miss. May 15, 2003), opinion withdrawn by, substituted opinion at 861 So. 2d 1029, 2003 Miss. LEXIS 874 (Miss. 2003).

Summary judgment against a depositor's claim for punitive damages against a bank for allowing a bank employee to steal \$1500 from the depositor's savings account was inappropriate; the question of whether a bank manager acted in bad faith in investigating the depositor's claim was a question of fact for a jury to decide. *Wise v. Valley Bank*, 850 So. 2d 1177 (Miss. Ct. App. 2002), *aff'd*, 2003 Miss. LEXIS 231 (Miss. 2003).

§ 75-4-104. Definitions and index of definitions.

(a) In this chapter, unless the context otherwise requires:

(1) "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit.

(2) "Afternoon" means the period of a day between noon and midnight.

(3) "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions.

(4) "Clearinghouse" means an association of banks or other payors regularly clearing items.

(5) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank.

(6) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (Section 75-8-102) or instructions for uncertificated securities (Section 75-8-102), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft.

(7) "Draft" means a draft as defined in Section 75-3-104 or an item, other than an instrument, that is an order.

(8) "Drawee" means a person ordered in a draft to make payment.

(9) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Chapter 4A or a credit or debit card slip.

(10) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later.

(11) "Settle" means to pay in cash, by clearinghouse settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final.

(12) “Suspends payments” with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over, or that it ceases or refuses to make payments in the ordinary course of business.

(b) Other definitions applying to this chapter and the sections in which they appear are:

| | |
|--|------------------|
| “Agreement for electronic presentment” | Section 75-4-110 |
| “Collecting bank” | Section 75-4-105 |
| “Depository bank” | Section 75-4-105 |
| “Intermediary bank” | Section 75-4-105 |
| “Payor bank” | Section 75-4-105 |
| “Presenting bank” | Section 75-4-105 |
| “Presentment notice” | Section 75-4-110 |

(c) The following definitions in other chapters apply to this chapter:

| | |
|------------------------------|------------------|
| “Acceptance” | Section 75-3-409 |
| “Alteration” | Section 75-3-407 |
| “Cashier’s check” | Section 75-3-104 |
| “Certificate of deposit” | Section 75-3-104 |
| “Certified check” | Section 75-3-409 |
| “Check” | Section 75-3-104 |
| “Control” | Section 75-7-106 |
| “Holder in due course” | Section 75-3-302 |
| “Instrument” | Section 75-3-104 |
| “Notice of dishonor” | Section 75-3-503 |
| “Order” | Section 75-3-103 |
| “Ordinary care” | Section 75-3-103 |
| “Person entitled to enforce” | Section 75-3-301 |
| “Presentment” | Section 75-3-501 |
| “Promise” | Section 75-3-103 |
| “Prove” | Section 75-3-103 |
| “Remotely created check” | Section 75-3-103 |
| “Teller’s check” | Section 75-3-104 |
| “Unauthorized signature” | Section 75-3-403 |

(d) In addition, Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

SOURCES: Codes, 1942, § 41A:4-104; Laws, 1966, ch. 316, § 4-104; Laws, 1992, ch. 420, § 75; Laws, 1996, ch. 468, § 55; Laws, 2006, ch. 527, § 56; Laws, 2010, ch. 506, § 27, eff from and after July 1, 2010.

Amendment Notes — The 2006 amendment added the section reference for the definition of “Control” in (c).

The 2010 amendment, in (b), deleted the entry for “Bank”; and in (c), deleted the entry for “Good faith” and added the entry for “Remotely created check.”

JUDICIAL DECISIONS

2. Account.

Under Miss. Code Ann. § 75-4-104(3) and Miss. Code Ann. § 75-9-102(29), a customer's line of credit possibly qualified as an account, but not as a deposit account; thus, where a 2002 customer agreement applied to depository accounts but not to a customer's line of credit, and a 2004 customer agreements did not con-

tain the required specific, retroactive language in the arbitration provisions, a bank could not compel the customer to arbitrate claims of tortious breach of contract and emotional distress, alleging that the bank and an insurer failed to pay benefits under a credit disability insurance policy. *AmSouth Bank v. Quimby*, 963 So. 2d 1145 (Miss. 2007).

§ 75-4-105. Definitions of types of banks.

In this chapter:

(1) [Reserved]

(2) "Depository bank" means the first bank to take an item even though it is also the payor bank, unless the item is presented for immediate payment over the counter.

(3) "Payor bank" means a bank that is the drawee of a draft.

(4) "Intermediary bank" means a bank to which an item is transferred in course of collection except the depository or payor bank.

(5) "Collecting bank" means a bank handling an item for collection except the payor bank.

(6) "Presenting bank" means a bank presenting an item except a payor bank.

SOURCES: Codes, 1942, § 41A:4-105; Laws, 1966, ch. 316, § 4-105; Laws, 1992, ch. 420, § 76; Laws, 2010, ch. 506, § 28, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment deleted and reserved former (1), which was the definition for "bank."

PART 2.

COLLECTION OF ITEMS: DEPOSITORY AND COLLECTING BANKS.

| SEC. | |
|-----------|---|
| 75-4-207. | Transfer warranties. |
| 75-4-208. | Presentment warranties. |
| 75-4-210. | Security interest of collecting bank in items, accompanying documents and proceeds. |
| 75-4-212. | Presentment by notice of item not payable by, through, or at bank; liability of drawer or indorser. |

§ 75-4-205. Depositary bank holder of unindorsed item.**JUDICIAL DECISIONS****1. In general.**

In a case involving deposits made by a customer into a trust and operating account during the commission of a fraud, a bank did not lose its holder in due course status, despite the varying endorsements made by the customer, pursuant to Miss.

Code Ann. §§ 75-4-205(1), 75-3-302(a); the endorsements were not defective based on a failure to reference the customer's status as a trustee. *Holifield v. BancorpSouth, Inc.*, 891 So. 2d 241 (Miss. Ct. App. 2004).

§ 75-4-207. Transfer warranties.

(a) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

- (1) The warrantor is a person entitled to enforce the item;
- (2) All signatures on the item are authentic and authorized;
- (3) The item has not been altered;

(4) The item is not subject to a defense or claim in recoupment (Section 75-3-305(a)) of any party that can be asserted against the warrantor;

(5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer; and

(6) With respect to a remotely created check, that the person on whose account the remotely created check is drawn authorized the issuance of the check in the amount stated on the check and to the payee stated on the check.

(b) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item (i) according to the terms of the item at the time it was transferred, or (ii) if the transfer was of an incomplete item, according to its terms when completed as stated in Sections 75-3-115 and 75-3-407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an indorsement stating that it is made "without recourse" or otherwise disclaiming liability.

(c) A person to whom the warranties under subsection (a) are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(d) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(e) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

SOURCES: 4-207; Laws, 1966, ch. 316, § 4-207; Laws, 1992, ch. 420, § 89; Laws, 2010, ch. 506, § 29, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment added (a)(6), and made related changes.

§ 75-4-208. Presentment warranties.

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

(1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) The draft has not been altered;

(3) The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized; and

(4) With respect to a remotely created check, that the person on whose account the remotely created check is drawn authorized the issuance of the check in the amount stated on the check and to the payee stated on the check.

(b) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft (i) breach of warranty is a defense to the obligation of the acceptor, and (ii) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under Section 75-3-404 or 75-3-405 or the drawer is precluded under Section 75-3-406 or 75-4-406 from asserting against the drawee the unauthorized indorsement or alteration. If a drawee asserts a claim for breach of warranty under subsection (a)(4), the warrantor may defend by proving that the person on whose account the remotely created check is drawn is precluded under Section 75-4-406, as applicable, from asserting against the drawee the unauthorized issuance of the check.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

SOURCES: Laws, 1992, ch. 420, § 90; Laws, 2010, ch. 506, § 30, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment, in (a), added (4), and made related changes; and added the last sentence in (c).

§ 75-4-210. Security interest of collecting bank in items, accompanying documents and proceeds.

(a) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(1) In case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(2) In case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or

(3) If it makes an advance on or against the item.

(b) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Title 75, Chapter 9, but:

(1) No security agreement is necessary to make the security interest enforceable (Section 75-9-203(b)(3)(A));

(2) No filing is required to perfect the security interest; and

(3) The security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

SOURCES: Formerly § 75-4-208: Codes, 1942, § 41A:4-208; Laws, 1966, ch. 316, § 4-208; Laws, 1992, ch. 420, § 92; Laws, 2001, ch. 495, § 15; Laws, 2006, ch. 527, § 57, eff from and after July 1, 2006.

Amendment Notes — The 2006 amendment inserted “possession or control of the” and “Title 75” in (c); and added the final closing parenthesis mark at the end of (c)(1).

JUDICIAL DECISIONS

I. In general.

Neither a Chapter 7 trustee nor a bank were entitled to summary judgment on the trustee’s claim that wire transfers a petroleum company (“debtor”) made to the bank less than 90 days before it declared bankruptcy to cover overdrafts that were due to a check kiting scheme were preferential transfers that could be recovered for the debtor’s bankruptcy estate under 11 U.S.C.S. § 547(b). Events that oc-

curred after the bank learned about the check kiting scheme raised issues of fact as to whether the transfers satisfied the bank’s security interest in the kited checks under Miss. Code Ann. § 75-4-210, and whether the transfers constituted property of the debtor’s bankruptcy estate. *Henderson v. Cmty. Bank (In re Stinson Petroleum Co.)*, — Bankr. —, 2011 Bankr. LEXIS 1421 (Bankr. S.D. Miss. Apr. 12, 2011).

§ 75-4-212. Presentment by notice of item not payable by, through, or at bank; liability of drawer or indorser.

(a) Unless otherwise instructed, a collecting bank may present an item not payable by, through, or at a bank by sending to the party to accept or pay a record providing notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under Section 75-3-501 by the close of the bank’s next banking day after it knows of the requirement.

(b) If presentment is made by notice and payment, acceptance, or request for compliance with a requirement under Section 75-3-501 is not received by the close of business on the day after maturity or, in the case of demand items, by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any drawer or indorser by sending it notice of the facts.

SOURCES: Formerly § 75-4-210: Codes, 1942, § 41A:4-210; Laws, 1966, ch. 316, § 4-210; Laws, 1992, ch. 420, § 94; Laws, 2010, ch. 506, § 31, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment substituted “pay a record providing notice” for “pay a written notice” in the first sentence in (a).

PART 3.

COLLECTION OF ITEMS: PAYOR BANKS.

SEC.
75-4-301. Deferred posting; recovery of payment by return of items; time of dishonor; return of items by payor bank.

§ 75-4-301. Deferred posting; recovery of payment by return of items; time of dishonor; return of items by payor bank.

(a) If a payor bank settles for a demand item other than a documentary draft presented otherwise than for immediate payment over the counter before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover the settlement if, before it has made final payment and before its midnight deadline, it:

(1) Returns the item;

(2) Returns an image of the item, if the party to which the return is made has entered into an agreement to accept an image as a return of the item and the image is returned in accordance with that agreement; or

(3) Sends a record providing notice of dishonor or nonpayment if the item is unavailable for return.

(b) If a demand item is received by a payor bank for credit on its books, it may return the item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in subsection (a).

(c) Unless previous notice of dishonor has been sent, an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(d) An item is returned:

(1) As to an item presented through a clearinghouse, when it is delivered to the presenting or last collecting bank or to the clearinghouse or is sent or delivered in accordance with clearinghouse rules; or

(2) In all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to instructions.

SOURCES: Codes, 1942, § 41A:4-301; Laws, 1966, ch. 316, § 4-301; Laws, 1992, ch. 420, § 99; Laws, 2010, ch. 506, § 32, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment added (a)(2), and made a related change; and redesignated former (a)(2) as (a)(3), and therein substituted "Sends a record providing notice" for "Sends written notice."

PART 4.

RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER.

SEC.
75-4-403. Customer's right to stop payment; burden of proof of loss.

§ 75-4-403. Customer's right to stop payment; burden of proof of loss.

(a) A customer or any person authorized to draw on the account if there is more than one (1) person may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at a time and in a manner that affords the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in Section 75-4-303. If the signature of more than one (1) person is required to draw on an account, any of these persons may stop payment or close the account.

(b) A stop-payment order is effective for six (6) months, but it lapses after fourteen (14) calendar days if the original order was oral and was not confirmed in writing within that period. A stop-payment order may be renewed for additional six-month periods by a record given to the bank within a period during which the stop-payment order is effective.

(c) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a stop-payment order or order to close an account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under Section 75-4-402.

SOURCES: Codes, 1942, § 41A:4-403; Laws, 1966, ch. 316, § 4-403; Laws, 1992, ch. 420, § 104; Laws, 2010, ch. 506, § 33, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment substituted “by a record given to the bank” for “by a writing given to the bank” in (b).

§ 75-4-406. Customer's duty to discover and report unauthorized signature or alteration.

JUDICIAL DECISIONS

A. Decisions Under Uniform Commercial Code.

2. Customer's duties; examination.
10. Bank's negligence; standard of care.

A. Decisions Under Uniform Commercial Code.

2. Customer's duties; examination.

Bank customer's delay in detecting forgeries on her checking accounts barred suit against the bank, where the bank fulfilled its duty of making the customer's banking statements available to the customer under Miss. Code Ann. § 75-4-406(a); al-

though the customer claimed that she did not receive numerous statements from the bank, the customer failed to act reasonably when she took no action to replace the missing statements. *Union Planters Bank, N.A. v. Rogers*, 912 So. 2d 116 (Miss. 2005).

In a case arising from a series of forgeries made by one person on a bank customer's checking accounts, the customer was precluded under Miss. Code Ann. § 75-4-406(d) from making claims against the bank where the customer failed to notify the bank of the forgeries within 15 and or 30 days of the date the customer should

have reasonably discovered the forgeries. *Union Planters Bank, N.A. v. Rogers*, 912 So. 2d 116 (Miss. 2005).

10. Bank's negligence; standard of care.

In a case arising from a series of forgeries made by one person on a bank customer's checking accounts, the circuit judge erred in denying the bank's motion for

judgment notwithstanding the verdict because, under Miss. Code Ann. § 75-4-406(e), the customer failed to inspect her bank statements in a timely manner and because the customer produced no evidence that the bank had failed to exercise ordinary care or that it acted with bad faith in paying the checks. *Union Planters Bank, N.A. v. Rogers*, 912 So. 2d 116 (Miss. 2005).

CHAPTER 4A

Uniform Commercial Code—Funds Transfers

| | | |
|---------|--|-----------|
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| Part 2. | Issue and Acceptance of Payment Order..... | 75-4A-201 |

PART 1.

SUBJECT MATTER AND DEFINITIONS.

| | |
|------------|---------------------------------|
| SEC. | |
| 75-4A-105. | Other definitions. |
| 75-4A-106. | Time payment order is received. |

§ 75-4A-105. Other definitions.

(a) In this chapter:

(1) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(2) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this chapter.

(3) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(4) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(5) "Funds-transfer system" means a wire transfer network, automated clearinghouse, or other communication system of a clearinghouse or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(6) [Reserved]

(7) “Prove” with respect to a fact means to meet the burden of establishing the fact (Section 75-1-201(b)(8)).

(b) Other definitions applying to this chapter and the sections in which they appear are:

| | |
|---|-------------------|
| “Acceptance” | Section 75-4A-209 |
| “Beneficiary” | Section 75-4A-103 |
| “Beneficiary’s bank” | Section 75-4A-103 |
| “Executed” | Section 75-4A-301 |
| “Execution date” | Section 75-4A-301 |
| “Funds transfer” | Section 75-4A-104 |
| “Funds-transfer system rule” | Section 75-4A-501 |
| “Intermediary bank” | Section 75-4A-104 |
| “Originator” | Section 75-4A-104 |
| “Originator’s bank” | Section 75-4A-104 |
| “Payment by beneficiary’s bank to beneficiary” | Section 75-4A-405 |
| “Payment by originator to beneficiary” | Section 75-4A-406 |
| “Payment by sender to receiving bank” | Section 75-4A-403 |
| “Payment date” | Section 75-4A-401 |
| “Payment order” | Section 75-4A-103 |
| “Receiving bank” | Section 75-4A-103 |
| “Security procedure” | Section 75-4A-201 |
| “Sender” | Section 75-4A-103 |

(c) The following definitions in Title 75, Chapter 4, apply to this chapter:

| | |
|---------------------|------------------|
| “Clearinghouse” | Section 75-4-104 |
| “Item” | Section 75-4-104 |
| “Suspends payments” | Section 75-4-104 |

(d) In addition Title 75, Chapter 1, contains general definitions and principles of construction and interpretation applicable throughout this chapter.

SOURCES: Laws, 1991, ch. 316, § 1; Laws, 2010, ch. 506, § 34, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment deleted and reserved former (a)(6), which was the definition for “good faith”; and corrected the section reference in (7).

§ 75-4A-106. Time payment order is received.

(a) The time of receipt of a payment order or communication cancelling or amending a payment order is determined by the rules applicable to receipt of a notice stated in Section 75-1-202. A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications cancelling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amend-

ments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication cancelling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(b) If this chapter refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this chapter.

SOURCES: Laws, 1991, ch. 316, § 1; Laws, 2010, ch. 506, § 35, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment substituted “Section 75-1-202” for “Section 75-2-201(27)” in (a).

PART 2.

ISSUE AND ACCEPTANCE OF PAYMENT ORDER.

SEC.

75-4A-204. Refund of payment and duty of customer to report with respect to unauthorized payment order.

§ 75-4A-204. Refund of payment and duty of customer to report with respect to unauthorized payment order.

(a) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (i) not authorized and not effective as the order of the customer under Section 75-4A-202, or (ii) not enforceable, in whole or in part, against the customer under Section 75-4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding ninety (90) days after the date the customer received notification from the bank that the order was accepted or that the customer’s account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(b) Reasonable time under subsection (a) may be fixed by agreement as stated in Section 75-1-302(b), but the obligation of a receiving bank to refund payment as stated in subsection (a) may not otherwise be varied by agreement.

SOURCES: Laws, 1991, ch. 316, § 1; Laws, 2010, ch. 506, § 36, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment substituted “Section 75-1-302(b)” for “Section 75-1-104(1)” in (b).

JUDICIAL DECISIONS

1. Applicability.
2. Computation of interest.

1. Applicability.

Miss. Code Ann. § 75-4A-204 did not apply as the customer was unable to prove that the bank accepted a payment order from him that was not authorized; however, this was not the type of transmission error covered by Miss. Code Ann. § 75-4A-205 as neither the customer, nor anyone acting on his behalf, ever transmitted a duplicate payment order to the bank so as to bring the case within the provisions of § 75-4A-205. *Nat'l Bank of Commerce v. Shelton*, 27 So. 3d 444 (Miss. Ct. App. 2009).

2. Computation of interest.

Although Miss. Code Ann. § 75-4A-204 was not applicable the computation of interest was the same for Miss. Code Ann. § 75-4A-304, which provided that the bank was not obligated to pay interest on any amount refundable to the sender under § 75-4A-402(d) for the period before the bank learns of the execution error; it did not state that only ninety-days' interest was allowed, and it was implicit that the interest would accrue until the date of refund. *Nat'l Bank of Commerce v. Shelton*, 27 So. 3d 444 (Miss. Ct. App. 2009).

§ 75-4A-205. Erroneous payment orders.

JUDICIAL DECISIONS

1. In general.

Miss. Code Ann. § 75-4A-204 did not apply as the customer was unable to prove that the bank accepted a payment order from him that was not authorized; however, this was not the type of transmission error covered by Miss. Code Ann. § 75-4A-

205 as neither the customer, nor anyone acting on his behalf, ever transmitted a duplicate payment order to the bank so as to bring the case within the provisions of § 75-4A-205. *Nat'l Bank of Commerce v. Shelton*, 27 So. 3d 444 (Miss. Ct. App. 2009).

PART 3.

EXECUTION OF SENDER'S PAYMENT ORDER BY RECEIVING BANK.

§ 75-4A-303. Erroneous execution of payment order.

JUDICIAL DECISIONS

1. Applicability.

Receiving bank executed the only payment order issued by the customer by

transferring \$ 747.50 from the customer's account into another customer's account at the oral request of the customer's

agent, and thereafter, the bank's computer system, due to "an entry error" improperly duplicated that payment every month for over five years; the requirements of Miss. Code Ann. § 75-4A-402(c) were satisfied as the funds transfer was

completed, and the bank was entitled to recover from the customer, the sender, the amount of his order. *Nat'l Bank of Commerce v. Shelton*, 27 So. 3d 444 (Miss. Ct. App. 2009).

§ 75-4A-304. Duty of sender to report erroneously executed payment order.

JUDICIAL DECISIONS

1. In general.
2. Computation of interest.

1. In general.

Customer's failure to discover the bank's error prevented his recovering interest on the majority of the transfers; it did not make him liable to the bank for the bank's duplicate payments to the other customer. *Nat'l Bank of Commerce v. Shelton*, 27 So. 3d 444 (Miss. Ct. App. 2009).

2. Computation of interest.

Although Miss. Code Ann. § 75-4A-204 was not applicable the computation of

interest was the same for Miss. Code Ann. § 75-4A-304, which provided that the bank was not obligated to pay interest on any amount refundable to the sender under § 75-4A-402(d) for the period before the bank learns of the execution error; it did not state that only ninety-days' interest was allowed, and it was implicit that the interest would accrue until the date of refund. *Nat'l Bank of Commerce v. Shelton*, 27 So. 3d 444 (Miss. Ct. App. 2009).

PART 4.

PAYMENT.

§ 75-4A-402. Obligation of sender to pay receiving bank.

JUDICIAL DECISIONS

2. Computation of interest.

Although Miss. Code Ann. § 75-4A-204 was not applicable the computation of interest was the same for Miss. Code Ann. § 75-4A-304, which provided that the bank was not obligated to pay interest on any amount refundable to the sender un-

der § 75-4A-402(d) for the period before the bank learns of the execution error; it did not state that only ninety-days' interest was allowed, and it was implicit that the interest would accrue until the date of refund. *Nat'l Bank of Commerce v. Shelton*, 27 So. 3d 444 (Miss. Ct. App. 2009).

PART 5.

MISCELLANEOUS PROVISIONS.

§ 75-4A-505. Preclusion of objection to debit of customer's account.**JUDICIAL DECISIONS****1. In general.**

Appellate court had no explanation from the trial judge as to his denial of reconsideration based on the statute of limitations, Miss. Code Ann. § 75-4A-505, the judgment was reversed and remanded

to the trial court for consideration of the statute of limitations and the statute of repose, including all arguments as to waiver. *Nat'l Bank of Commerce v. Shelton*, 27 So. 3d 444 (Miss. Ct. App. 2009).

CHAPTER 5**Uniform Commercial Code—Revised Article 5. Letters of Credit**

SEC.

75-5-103. Scope.

§ 75-5-101. Short title.**JUDICIAL DECISIONS****2. Letters of credit.**

Trial court erred in confirming the special master's sale of property to a third-party bidder after rejecting the heir's high bid on the grounds that a letter of credit submitted by the heir was not the equivalent of cash because under the Uniform Commercial Code, Miss. Code Ann. §§ 75-5-101 to 75-5-118, the letter of credit was sufficient and the fourth heir's bid was the highest bid that satisfied the require-

ments set forth in the consent judgment in the other heirs' partition action. Therefore, the case was remanded for the trial court to set aside the sale. *Hataway v. Estate of Nicholls*, — So. 2d —, 2004 Miss. LEXIS 1328 (Miss. Oct. 28, 2004), opinion withdrawn by, substituted opinion at 893 So. 2d 1054, 2005 Miss. LEXIS 109, 56 U.C.C. Rep. Serv. 2d (CBC) 576 (Miss. 2005).

§ 75-5-103. Scope.

(a) This chapter applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(b) The statement of a rule in this chapter does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this chapter.

(c) With the exception of this subsection, subsections (a) and (d), Sections 75-5-102(a)(9) and (10), 75-5-106(d), and 75-5-114(d), and except to the extent prohibited in Sections 75-1-302 and 75-5-117(d), the effect of this chapter may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing

liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this chapter.

(d) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

SOURCES: Laws, 1996, ch. 460, § 4; Laws, 2010, ch. 506, § 37, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment substituted “75-1-302” for “75-1-102(3)” in the first sentence in (c).

JUDICIAL DECISIONS

1. In general; applicability.

Where former owners of bankruptcy debtors obtained letters of credit to secure the debtors' obligations under a sale/lease-back agreement concerning the debtors' equipment with the lessor of the equipment, the owners were not precluded from entitlement to equitable subrogation of the debtors' rights against the lessor simply because Miss. Code Ann. § 75-5-117 did not expressly grant an applicant subrogation rights against a beneficiary; the

statute explicitly placed the owners in the same position as if they were guarantors, and Miss. Code Ann. § 75-5-103 specifically recognized that the express inclusion of rights concerning letters of credit did not negate other rights which were not expressly addressed. *B.C. Rogers Processors, Inc. v. CIT Group/Equip. Fin., Inc.* (In re B.C. Rogers Poultry, Inc.), — Bankr. —, 2009 Bankr. LEXIS 3729 (Bankr. S.D. Miss. Nov. 16, 2009).

§ 75-5-108. Issuer's rights and obligations.

JUDICIAL DECISIONS

1. In general.

Although a fourth heir's letter of guarantee from a bank complied with Miss. Code Ann. § 75-5-108, a special master at a partition sale was not required to accept the bid presented with the letter of guarantee because the letter of guarantee conditioned the payment of funds on the

delivery of “clear title.” As the special master had not been instructed to deliver the property with clear title by the chancery court, it could not satisfy the condition in the letter of guarantee and was not required to accept the bid. *Hataway v. Estate of Nicholls*, 893 So. 2d 1054 (Miss. 2005).

§ 75-5-117. Subrogation of issuer, applicant and nominated person.

JUDICIAL DECISIONS

1. Subrogation rights of applicant.

Where former owners of bankruptcy debtors obtained letters of credit to secure

the debtors' obligations under a sale/lease-back agreement concerning the debtors' equipment with the lessor of the equip-

ment, the owners were not precluded from entitlement to equitable subrogation of the debtors' rights against the lessor simply because Miss. Code Ann. § 75-5-117 did not expressly grant an applicant subrogation rights against a beneficiary; the statute explicitly placed the owners in the same position as if they were guarantors, and Miss. Code Ann. § 75-5-103 specifi-

cally recognized that the express inclusion of rights concerning letters of credit did not negate other rights which were not expressly addressed. *B.C. Rogers Processors, Inc. v. CIT Group/Equip. Fin., Inc.* (In re *B.C. Rogers Poultry, Inc.*), — Bankr. —, 2009 Bankr. LEXIS 3729 (Bankr. S.D. Miss. Nov. 16, 2009).

CHAPTER 7

Uniform Commercial Code—Documents of Title

Part 1. General.....75-7-101

Part 2. Warehouse Receipts: Special Provisions.....75-7-201

Part 3. Bills of Lading: Special Provisions.....75-7-301

Part 4. Warehouse Receipts and Bills of Lading: General Obligations.....75-7-401

Part 5. Warehouse Receipts and Bills of Lading: Negotiation and Transfer.....75-7-501

Part 6. Warehouse Receipts and Bills of Lading Miscellaneous Provisions.....75-7-601

Part 7. Transitional Rules.....75-7-701

PART 1.

GENERAL.

SEC.

75-7-102. Definitions and index of definitions.

75-7-103. Relation of chapter to treaty, statute, tariff or regulation.

75-7-104. Negotiable and nonnegotiable bill of lading or other document of title.

75-7-105. Issuance of tangible document of title as substitute for electronic document; issuance of electronic document as substitute for tangible document.

75-7-106. Control of electronic document of title.

§ 75-7-102. Definitions and index of definitions.

(a) In this chapter, unless the context otherwise requires:

- (1) “Bailee” means a person that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.
- (2) “Carrier” means a person that issues a bill of lading.
- (3) “Consignee” means a person named in a bill of lading to which or to whose order the bill promises delivery.
- (4) “Consignor” means a person named in a bill of lading as the person from which the goods have been received for shipment.
- (5) “Delivery order” means a record that contains an order to deliver goods directed to a warehouse, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of lading.

(6) [Reserved]

(7) “Goods” means all things that are treated as movable for the purposes of a contract for storage or transportation.

(8) “Issuer” means a bailee that issues a document of title or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver. The term includes a person for which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer’s instructions.

(9) “Person entitled under the document” means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.

(10) [Reserved]

(11) “Sign” means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic sound, symbol, or process.

(12) “Shipper” means a person that enters into a contract of transportation with a carrier.

(13) “Warehouse” means a person engaged in the business of storing goods for hire.

(b) Definitions in other chapters applying to this chapter and the sections in which they appear are:

(1) “Contract for sale,” Section 75-2-106.

(2) “Lessee in the ordinary course of business,” Section 75-2A-103.

(3) “‘Receipt’ of goods,” Section 75-2-103.

(c) In addition, Chapter 1 of this title contains general definitions and principles of construction and interpretation applicable throughout this chapter.

SOURCES: Codes, 1942, § 41A:7-102; Laws, 1966, ch. 316, § 7-102; Laws, 2006, ch. 527, § 1; Laws, 2007, ch. 355, § 1; Laws, 2007, ch. 381, § 1; Laws, 2010, ch. 506, § 38, eff from and after July 1, 2010.

Joint Legislative Committee Note — Section 1 of ch. 355, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 1 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 381, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2006 amendment rewrote the section.

The first 2007 amendment (ch. 355), redesignated former (1) through (3) as present (a) through (c); in (a), redesignated former (1)(a) through (m) as present (a)(1) through

(13) and inserted “of lading” in (a)(3) and (4); designated the paragraphs following (b) as (b)(1) through (3); inserted “of this title” in (c); and made minor stylistic changes throughout.

The second 2007 amendment (ch. 381) redesignated former (1) through (3) as present (a) through (c); inserted “of lading” in (a)(3) and (4); inserted “of this title” in (c); and made minor stylistic changes throughout.

The 2010 amendment deleted and reserved former (a)(6) and (a)(10), which were the definitions for “good faith” and “record,” respectively.

Cross References — For applicability to this section, of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

§ 75-7-103. Relation of chapter to treaty, statute, tariff or regulation.

(a) This chapter is subject to any treaty or statute of the United States or regulatory statute of this state to the extent the treaty, statute, or regulatory statute is applicable.

(b) This chapter does not repeal or modify any law prescribing the form or contents of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee’s businesses in respects not specifically treated in this chapter. However, violation of these laws does not affect the status of a document of title that otherwise complies with the definition of a document of title.

(c) This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 USCS Section 7001 et seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 USCS Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 USCS Section 7003(b)).

(d) To the extent there is a conflict between the Uniform Electronic Transactions Act (Title 75, Chapter 12) and this chapter, this chapter governs.

SOURCES: Codes, 1942 § 41A:7-103; Laws, 1966, ch. 316, § 7-103; Laws, 2006, ch. 527, § 2; Laws, 2007, ch. 355, § 2; Laws, 2007, ch. 381, § 2, eff from and after passage (approved Mar. 15, 2007.)

Joint Legislative Committee Note — Section 2 of ch. 355, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 2 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 381, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2006 amendment rewrote the section.

The first 2007 amendment (ch. 355), redesignated former (1) through (4) as present (a) through (d); in (b), substituted “repeal or modify” for “modify or repeal” and “chapter” for “article” in the first sentence, and substituted “complies with” for “is within” in the last sentence; inserted “(Title 75, Chapter 12)” in (d); and made minor stylistic changes throughout.

The second 2007 amendment (ch. 381), redesignated former (1) through (4) as present (a) through (d); in (b), in the first sentence, substituted “This chapter does not repeal or

modify” for “This chapter does not modify or repeal,” and “in this chapter” for “in this article,” and in the last sentence, substituted “these laws” for “such a law” and “otherwise complies with” for “otherwise is within”; inserted “(Title 75, Chapter 12)” in (d); and made minor stylistic changes throughout.

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

§ 75-7-104. Negotiable and nonnegotiable bill of lading or other document of title.

(a) A document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person.

(b) A document of title other than one described in subsection (a) is nonnegotiable. A bill of lading that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against an order in a record signed by the same or another named person.

(c) A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

SOURCES: Codes, 1942, § 41A:7-104; Laws, 1966, ch. 316, § 7-104; Laws, 2006, ch. 527, § 3; Laws, 2007, ch. 355, § 3; Laws, 2007, ch. 381, § 3, eff from and after passage (approved Mar. 15, 2007.)

Joint Legislative Committee Note — Section 3 of ch. 355, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 3 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of Section 3 of ch. 381, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2006 amendment rewrote the section.

The first 2007 amendment (ch. 355), redesignated former (1) through (3) as present (a) through (c); deleted “Except as otherwise provided in subsection (3)” from the beginning of (a); in the second sentence of (b), substituted “lading that states that” for “lading in which it is stated that” and “an order in a record signed” for “a written order signed”; and made minor stylistic changes.

The second 2007 amendment (ch. 381) redesignated former (1) through (3) as present (a) through (c); deleted “Except as otherwise provided in subsection (3)” from the beginning of (a); in (b), substituted “that states” for “in which it is stated,” and “an order in a record signed” for “a written order signed.”

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

§ 75-7-105. Issuance of tangible document of title as substitute for electronic document; issuance of electronic document as substitute for tangible document.

(a) Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

(1) The person entitled under the electronic document surrenders control of the document to the issuer; and

(2) The tangible document when issued contains a statement that it is issued in substitution for the electronic document.

(b) Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection (a):

(1) The electronic document ceases to have any effect or validity; and

(2) The person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

(c) Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

(1) The person entitled under the tangible document surrenders possession of the document to the issuer; and

(2) The electronic document when issued contains a statement that it is issued in substitution for the tangible document.

(d) Upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with subsection (c):

(1) The tangible document ceases to have any effect or validity; and

(2) The person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

SOURCES: Codes, 1942, § 41A:7-105; Laws, 1966, ch. 316, § 7-105; Laws, 2006, ch. 527, § 4; Laws, 2007, ch. 355, § 4; Laws, 2007, ch. 381, § 4, eff from and after passage (approved Mar. 15, 2007.)

Joint Legislative Committee Note — Section 4 of ch. 355, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 4 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of Section 4 of ch. 381, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2006 amendment rewrote the section.

The first 2007 amendment (ch. 355), redesignated former (1) through (4) as present (a) through (d), and in each, redesignated former (a) and (b) as present (1) and (2); substituted “(a)” for “(1)” at the end of (b); and substituted “(c)” for “(3)” at the end of (d).

The second 2007 amendment (ch. 381) redesignated former (1) through (4) as present (a) through (d); substituted “subsection (a)” for “subsection (1)” at the end of (b); and substituted “subsection (c)” for “subsection (3)” at the end of (d).

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

§ 75-7-106. Control of electronic document of title.

(a) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(b) A system satisfies subsection (a), and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) The authoritative copy identifies the person asserting control as:

(A) The person to which the document was issued; or

(B) If the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(3) The authoritative copy is communicated to and maintained by the person asserting control or is designated custodian;

(4) Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

SOURCES: Laws, 2006, ch. 527, § 5; Laws, 2007, ch. 355, § 5; Laws, 2007, ch. 381, § 5, eff from and after passage (approved Mar. 15, 2007.)

Joint Legislative Committee Note — Section 5 of ch. 355, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 5 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of Section 5 of ch. 381, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The first 2007 amendment (ch. 355), redesignated former (1) and (2) as present (a) and (b); in (b), redesignated former (a) through (f) as present (1)

through (6), and substituted “(a)” for “(1)” following “subsection”; and substituted “(4), (5), and (6)” for “(d), (e) and (f)” following “paragraphs” in (b)(1).

The second 2007 amendment (ch. 381), redesignated former (1) and (2), as present (a) and (b); substituted “subsection (a)” for “subsection (1)” in (b); substituted “paragraphs (4), (5), and (6)” for “paragraphs (d), (e), and (f)” in (b)(1); and made minor stylistic changes.

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

PART 2.

WAREHOUSE RECEIPTS: SPECIAL PROVISIONS.

SEC.

- 75-7-201. Who may issue a warehouse receipt; storage under government bond.
- 75-7-202. Form of warehouse receipt; essential terms; optional terms.
- 75-7-203. Liability for nonreceipt or misdescription.
- 75-7-204. Duty of care; contractual limitation of warehouse’s liability; relationship of section to Chapters 43 and 44 of Title 75.
- 75-7-205. Title under warehouse receipt defeated in certain cases.
- 75-7-206. Termination of storage at warehouse’s option.
- 75-7-207. Goods must be kept separate; fungible goods.
- 75-7-208. Altered warehouse receipts.
- 75-7-209. Lien of warehouse.
- 75-7-210. Enforcement of warehouse’s lien.

§ 75-7-201. Who may issue a warehouse receipt; storage under government bond.

(a) A warehouse receipt may be issued by any warehouse.

(b) If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods is deemed to be a warehouse receipt even if issued by a person that is the owner of the goods and is not a warehouse.

SOURCES: Codes, 1942, § 41A:7-201; Laws, 1966, ch. 316, § 7-201; Laws, 2006, ch. 527, § 6; Laws, 2007, ch. 355, § 6; Laws, 2007, ch. 381, § 6, **eff from and after passage** (approved Mar. 15, 2007.)

Joint Legislative Committee Note — Section 6 of ch. 355, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 6 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of Section 6 of ch. 381, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2006 amendment substituted “warehouse” for “warehousemen” at the end of (1) and (2); in (2), substituted “If” for “Where” at the beginning, and “is deemed to be” for “has like effect” near the end.

The first 2007 amendment (ch. 355), redesignated former (1) and (2) as present (a) and (b); in (b), substituted “deemed to be a warehouse” for “deemed to be as a warehouse,” and substituted “person that” for “person who.”

The second 2007 amendment (ch. 381), redesignated former (1) and (2) as present (a) and (b); and made minor stylistic changes.

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

§ 75-7-202. Form of warehouse receipt; essential terms; optional terms.

(a) A warehouse receipt need not be in any particular form.

(b) Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused to a person injured by its omission:

(1) The location of the warehouse facility where the goods are stored;

(2) The date of issue of the receipt;

(3) The unique identification code of the receipt;

(4) A statement whether the goods received will be delivered to the bearer, to a named person, or to a named person or its order;

(5) The rate of storage and handling charges, but if goods are stored under a field warehousing arrangement, a statement of that fact is sufficient on a nonnegotiable receipt;

(6) A description of the goods or the packages containing them;

(7) The signature of the warehouse or its agent;

(8) If the receipt is issued for goods that the warehouse owns, either solely, jointly, or in common with others, the fact of that ownership; and

(9) A statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest, but if the precise amount of advances made or of liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouse or to its agent that issued the receipt, a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.

(c) A warehouse may insert in its receipt any terms that are not contrary to the provisions of the Uniform Commercial Code and do not impair its obligation of delivery under Section 75-7-403 or its duty of care under Section 75-7-204. Any contrary provisions are ineffective.

SOURCES: Codes, 1942, § 7-202; Laws, 1966, ch. 316, § 7-202; Laws, 2006, ch. 527, § 7; Laws, 2007, ch. 355, § 7; Laws, 2007, ch. 381, § 7, eff from and after passage (approved Mar. 15, 2007.)

Joint Legislative Committee Note — Section 7 of ch. 355, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 7 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of Section 7 of ch. 381, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2006 amendment rewrote the section.

The first 2007 amendment (ch. 355), redesignated former (1) and (2) as present (a) and (b); in (b), redesignated former (a) through (i) as present (1) through (9); deleted “A statement of” from the beginning of (b)(1); inserted “the bearer, to” in (b)(4); in (b)(5), substituted “but if goods” for “unless goods,” and deleted “in which” following “arrangement”; deleted “a statement of” following “in common with others,” in (b)(8); in (b)(9), substituted “but if” for “unless” following “security interest,” substituted “liabilities incurred is, at the time of the issue of the receipt, unknown” for “liabilities incurred, at the time of the issue of the receipt, is unknown,” and deleted “in which case” following “issued the receipt”; in (c), deleted “other” following “in its receipt any,” substituted “delivery under Section 75-7-403 or its duty of care under Section 75-7-204” for “delivery (Section 75-7-403) or its duty of care (Section 75-7 204)”; and made minor stylistic changes.

The second 2007 amendment (ch. 381), redesignated former (1) through (3) as present (a) through (c); inserted “the bearer, to” in (b)(4); in (b)(5), substituted “but if goods” for “unless goods” and deleted “in which” following “arrangement”; deleted “a statement of” following “in common with others” in (b)(8); rewrote (b)(9); in (c), deleted “other” preceding “terms that are not contrary,” and substituted “delivery under Section 75-7-403” for “delivery (Section 75-7-403)” and “care under Section 75-7-204” for “care (Section 75-7-204)”; and made minor stylistic changes throughout.

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

§ 75-7-203. Liability for nonreceipt or misdescription.

A party to or purchaser for value in good faith of a document of title, other than a bill of lading, that relies upon the description of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

(1) The document conspicuously indicates that the issuer does not know whether all or part of the goods in fact were received or conform to the description, such as a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by “contents, condition, and quality unknown,” “said to contain,” or words of similar import, if the indication is true; or

(2) The party or purchaser otherwise has notice of the nonreceipt or misdescription.

SOURCES: Codes, 1942, § 41A:7-203; Laws, 1966, ch. 316, § 7-203; Laws, 2006, ch. 527, § 8; Laws, 2007, ch. 355, § 8; Laws, 2007, ch. 381, § 8, eff from and after passage (approved Mar. 15, 2007.)

Joint Legislative Committee Note — Section 8 of ch. 355, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 8 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of Section 8 of ch. 381, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2006 amendment rewrote the section.

The first 2007 amendment (ch. 355), redesignated former (a) and (b), as present (1) and (2); and made minor stylistic changes.

The second 2007 amendment (ch. 381), redesignated former (a) and (b) as present (1) and (2); and made minor stylistic changes throughout.

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

§ 75-7-204. Duty of care; contractual limitation of warehouse's liability; relationship of section to Chapters 43 and 44 of Title 75.

(a) A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances. However, unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.

(b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse's liability for conversion to its own use. The warehouse's liability, on request of the bailor in a record at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt, may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement.

(d) This section does not impair or repeal Title 75, Chapter 43, or Title 75, Chapter 44.

SOURCES: Codes, 1942, § 41A:7-204; Laws, 1966, ch. 316, § 7-204; Laws, 2006, ch. 527, § 9; Laws, 2007, ch. 355, § 9; Laws, 2007, ch. 381, § 9, eff from and after passage (approved Mar. 15, 2007.)

Joint Legislative Committee Note — Section 9 of ch. 355, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 9 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of Section 9 of ch. 381, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2006 amendment rewrote the section.

The first 2007 amendment (ch. 355), redesignated former (1) through (4), as present (a) through (d); in (a), substituted “goods that a” for “goods as a” and “similar circumstances” for “like circumstances,” and added “However” at the beginning of the second sentence; in the second sentence of (b), added “The warehouse’s liability” to the beginning, and deleted “the warehouse’s liability” following “receipt of the warehouse receipt”; and made minor stylistic changes.

The second 2007 amendment redesignated (1) through (4), as present (a) through (d); rewrote the second sentence in (b); and made minor stylistic changes throughout.

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

§ 75-7-205. Title under warehouse receipt defeated in certain cases.

A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling the goods takes free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

SOURCES: Codes, 1942, § 41A:7-205; Laws, 1966, ch. 316, § 7-205; Laws, 2006, ch. 527, § 10, eff from and after July 1, 2006.

Amendment Notes — The 2006 amendment substituted “warehouse that” for “warehouseman who” and “even if the receipt is negotiable and” for “even though it” and made a minor stylistic change.

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

§ 75-7-206. Termination of storage at warehouse’s option.

(a) A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title or, if a period is not fixed, within a stated period not less than thirty (30) days after the warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to Section 75-7-210.

(b) If a warehouse in good faith believes that goods are about to deteriorate or decline in value to less than the amount of its lien within the time provided in subsection (a) and Section 75-7-210, the warehouse may specify in the notice given under subsection (a) any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than one (1) week after a single advertisement or posting.

(c) If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the warehouse facilities, or other persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and does not incur liability by reason of that disposition.

(d) A warehouse shall deliver the goods to any person entitled to them under this chapter upon due demand made at any time before sale or other disposition under this section.

(e) A warehouse may satisfy its lien from the proceeds of any sale or disposition under this section but shall hold the balance for delivery on the demand of any person to which the warehouse would have been bound to deliver the goods.

SOURCES: Codes, 1942, § 41A:7-206; Laws, 1966, ch. 316, § 7-206; Laws, 2006, ch. 527, § 11; Laws, 2007, ch. 355, § 10; Laws, 2007, ch. 381, § 10, eff from and after passage (approved Mar. 15, 2007.)

Joint Legislative Committee Note — Section 10 of ch. 355, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 10 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of Section 10 of ch. 381, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2006 amendment rewrote the section.

The first 2007 amendment (ch. 355), redesignated former (1) through (5), as present (a) through (e); substituted “subsection (a)” for “subsection (1)” two times in (b); substituted “warehouse facilities” for “warehouse facility” in the first sentence of (c); and made a minor stylistic change.

The second 2007 amendment (ch. 381) redesignated former (1) through (5) as present (a) through (e); substituted “subsection (a)” for “subsection (1)” twice in (b); and made a minor stylistic change.

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

§ 75-7-207. Goods must be kept separate; fungible goods.

(a) Unless the warehouse receipt provides otherwise, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, different lots of fungible goods may be commingled.

(b) If different lots of fungible goods are commingled, the goods are owned in common by the persons entitled thereto and the warehouse is severally liable to each owner for that owner’s share. If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts the warehouse has issued against it, the persons entitled include all holders to which overissued receipts have been duly negotiated.

SOURCES: Codes, 1942, § 41A:7-207; Laws, 1966, ch. 316, § 7-207; Laws, 2006, ch. 527, § 12; Laws, 2007, ch. 355, § 11; Laws, 2007, ch. 381, § 11, eff from and after passage (approved Mar. 15, 2007.)

Joint Legislative Committee Note — Section 11 of ch. 355, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 11 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of Section 11 of ch. 381, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative

session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2006 amendment, in (1), substituted “warehouse shall” for “warehouseman” and, at the end of the first sentence, substituted “. However,” for “except that”; and in (2), added “If different lots of” at the beginning, inserted “the goods” following “commingled,” substituted “warehouse” for “warehouseman” both times it appears, and made minor stylistic changes.

The first 2007 amendment (ch. 355), redesignated former (1) and (2), as present (a) and (b); and substituted “provides otherwise” for “otherwise provides” in (a).

The second 2007 amendment (ch. 381), redesignated former (1) and (2) as present (a) and (b); and substituted “provides otherwise” for “otherwise provides” in (a).

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

§ 75-7-208. Altered warehouse receipts.

If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

SOURCES: Codes, 1942, § 41A:7-208; Laws, 1966, ch. 316, § 7-208; Laws, 2006, ch. 527, § 13; Laws, 2007, ch. 355, § 12; Laws, 2007, ch. 381, § 12, eff from and after passage (approved Mar. 15, 2007.)

Joint Legislative Committee Note — Section 12 of ch. 355, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 12 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of Section 12 of ch. 381, Laws, 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2006 amendment, in the first sentence, substituted “If” for “Where” at the beginning, inserted “tangible” preceding “warehouse receipt” and “good-faith” preceding “purchaser,” and substituted “lack of authority” for “want of authority”; and inserted “tangible or electronic” preceding “receipt” in the last sentence.

The first 2007 amendment (ch. 355), inserted “warehouse” following “electronic” in the last sentence.

The second 2007 amendment (ch. 381), inserted “warehouse” following “electronic” in the last sentence.

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

§ 75-7-209. Lien of warehouse.

(a) A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in

relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

(b) The warehouse may also reserve a security interest under Title 75, Chapter 9, against the bailor for the maximum amount specified on the receipt for charges other than those specified in subsection (a), such as for money advanced and interest. A security interest is governed by the chapter on Secured Transactions (Title 75, Chapter 9).

(c) A warehouse's lien for charges and expenses under subsection (a) or a security interest under subsection (b) is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good faith purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:

(1) Deliver or entrust the goods or any document covering the goods to the bailor or the bailor's nominee with actual or apparent authority to ship, store, or sell; or with power to obtain delivery under Section 75-7-403; or with power of disposition under Section 75-2-403, 75-2A-304(2), 75-2A-305(2) or 75-9-320 or other statute or rule of law; or

(2) Acquiesce in the procurement by the bailor or its nominee of any document.

(d) A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection (a) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.

(e) A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

SOURCES: Codes, 1942, § 41A:7-209; Laws, 1966, ch. 316, § 7-209; Laws, 2006, ch. 527, § 14; Laws, 2007, ch. 355, § 13; Laws, 2007, ch. 381, § 13, eff from and after passage (approved Mar. 15, 2007.)

Joint Legislative Committee Note — Section 13 of ch. 355, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 13 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of Section

13 of ch. 381, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2006 amendment rewrote the section.

The first 2007 amendment (ch. 381), redesignated former (1) through (5) as present (a) through (e); substituted “subsection (a)” for “subsection (1)” and “subsection (b)” for “subsection (2)” throughout; rewrote (c)(1); and made minor stylistic changes.

The second 2007 amendment (ch. 381), redesignated former (1) through (5) as present (a) through (e); substituted “subsection (a)” for “subsection (1)” and “subsection (b)” for “subsection (2)” throughout; rewrote (c)(1); and made minor stylistic changes.

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

§ 75-7-210. Enforcement of warehouse’s lien.

(a) Except as otherwise provided in subsection (b), a warehouse’s lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse has sold in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) A warehouse’s lien on goods, other than goods stored by a merchant in the course of its business, may be enforced only if the following requirements are satisfied:

(1) All persons known to claim an interest in the goods must be notified.

(2) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten (10) days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(3) The sale must conform to the terms of the notification.

(4) The sale must be held at the nearest suitable place to where the goods are held or stored.

(5) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two (2) weeks consecutively in a newspaper of general circulation where the sale is to be

held. The advertisement must include a description of the goods, the name of the person on whose account the goods are being held, and the time and place of the sale. The sale must take place at least fifteen (15) days after the first publication. If there is no newspaper of general circulation in the county where the sale is to be held, the advertisement must be posted at least ten (10) days before the sale in not less than six (6) conspicuous places in the neighborhood of the proposed sale.

(c) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the warehouse subject to the terms of the receipt and this chapter.

(d) A warehouse may buy at any public sale held pursuant to this section.

(e) A purchaser in good faith of goods sold to enforce a warehouse's lien takes the goods free of any rights of persons against which the lien was valid, despite the warehouse's noncompliance with this section.

(f) A warehouse may satisfy its lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to which the warehouse would have been bound to deliver the goods.

(g) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(h) If a lien is on goods stored by a merchant in the course of its business, the lien may be enforced in accordance with subsection (a) or (b).

(i) A warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

SOURCES: Codes, 1942, § 41A:7-210; Laws, 1966, ch. 316, § 7-210; Laws, 2006, ch. 527, § 15; Laws, 2007, ch. 355, § 14; Laws, 2007, ch. 381, § 14, eff from and after passage (approved Mar. 15, 2007.)

Joint Legislative Committee Note — Section 14 of ch. 355, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 14 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of Section 14 of ch. 381, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2006 amendment rewrote the section.

The first 2007 amendment (ch. 355), redesignated former (1) through (3) as present (a) through (c), added (d) and (e), and redesignated former (4) through (7) as present (f) through (i); in (a), inserted "otherwise" following "Except as" and substituted "subsection (b)" for "subsection (2)" in the first sentence, and substituted "has sold" for "sells" and "or has otherwise sold" for "or otherwise sells" in the next-to-last sentence; in (b), substituted "A warehouse's lien" for "A warehouse may enforce its lien," and inserted "may be enforced"; inserted "the goods" following "whose account" in the second

sentence of (b)(5); substituted “with subsection (a) or (b)” for “with either subsection (1) or (2)” at the end of (h); and made minor stylistic changes throughout.

The second 2007 amendment (ch. 381), redesignated former (1) through (3) as present (a) through (c), added (d) and (e), and redesignated former (4) through (7) as present (f) through (i); in (a), inserted “otherwise” near the beginning of the first sentence, substituted “subsection (6)” for “subsection (2),” and substituted “has sold in” for “sells in” and “or has otherwise sold” for “or otherwise sells” in the next-to-last sentence; in (b), substituted “A warehouse’s lien” for “A warehouse may enforce its lien,” and inserted “may be enforced”; substituted “the goods are being held” for “they are being held” in the second sentence of (b)(5); substituted “with subsection (a) or (b)” for “with either subsection (1) or (2)” in (h); and made minor stylistic changes throughout.

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

PART 3.

BILLS OF LADING: SPECIAL PROVISIONS.

SEC.

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| 75-7-301. | Liability for nonreceipt or misdescription; “said to contain”; “shipper’s load and count”; improper handling. |
| 75-7-302. | Through bills of lading and similar documents of title. |
| 75-7-303. | Diversion; reconsignment; change of instructions. |
| 75-7-304. | Tangible bills of lading in a set. |
| 75-7-305. | Destination bills. |
| 75-7-307. | Lien of carrier. |
| 75-7-308. | Enforcement of carrier’s lien. |
| 75-7-309. | Duty of care; contractual limitation of carrier’s liability. |

§ 75-7-301. Liability for nonreceipt or misdescription; “said to contain”; “shipper’s load and count”; improper handling.

(a) A consignee of a nonnegotiable bill of lading which has given value in good faith, or a holder to which a negotiable bill has been duly negotiated, relying upon the description of the goods in the bill or upon the date shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the document of title indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as in a case in which the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by “contents or condition of contents of packages unknown,” “said to contain,” “shipper’s weight, load and count,” or words of similar import, if that indication is true.

(b) If goods are loaded by the issuer of the bill of lading, the issuer shall count the packages of goods if shipped in packages and ascertain the kind and quantity if shipped in bulk and words such as “shipper’s weight, load and count,” or words of similar import indicating that the description was made by the shipper are ineffective except as to goods concealed by packages.

(c) If bulk goods are loaded by a shipper that makes available to the issuer of the bill of lading adequate facilities for weighing those goods, the issuer shall ascertain the kind and quantity within a reasonable time after receiving the

shipper's request in a record to do so. In that case, "shipper's weight" or other words of similar import are ineffective.

(d) The issuer, by including in the bill of lading the words "shipper's weight, load and count," or words of similar import, may indicate that the goods were loaded by the shipper, and, if that statement is true, the issuer is not liable for damages caused by the improper loading. However, omission of such words does not imply liability for damages caused by improper loading.

(e) A shipper guarantees to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in those particulars. This right of the issuer to that indemnity does not limit its responsibility or liability under the contract of carriage to any person other than the shipper.

SOURCES: Codes, 1942, § 41A:7-301; Laws, 1966, ch. 316, § 7-301; Laws, 2006, ch. 527, § 16; Laws, 2007, ch. 355, § 15; Laws, 2007, ch. 381, § 15, eff from and after passage (approved Mar. 15, 2007.)

Joint Legislative Committee Note — Section 15 of ch. 355, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 15 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of Section 15 of ch. 381, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2006 amendment rewrote the section.

The first 2007 amendment (ch. 355), redesignated former (1) through (5), as present (a) through (e); inserted "in the bill" following "description of goods," and substituted "document of title" for "bill" in the first sentence of (a); in (b), deleted "(a)" preceding "the issuer" and "(b)" following "shipped in bulk and"; inserted "of the bill of lading" in (c); rewrote (d); substituted "This right of the issuer to that indemnity does not limit its" for "The right of indemnity does not limit the issuer's" in the last sentence of (e); and made minor stylistic changes.

The second 2007 amendment (ch. 381), redesignated former (1) through (5) as present (a) through (e); in (a), inserted "in the bill" following "description of goods," and substituted "document of title" for "bill"; in (b), substituted "bill of lading, the" for "bill of lading: (a) the" and "shipped in bulk and words" for "shipped in bulk; and (b) words"; inserted "of the bill of lading" in the first sentence of (c); rewrote (d); in (e), substituted "This right of the issuer to that indemnity does not limit its" for "The right of indemnity does not limit the issuer's"; and made minor stylistic changes throughout.

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

§ 75-7-302. Through bills of lading and similar documents of title.

(a) The issuer of a through bill of lading or other document of title embodying an undertaking to be performed in part by a person acting as its agent or by a performing carrier is liable to any person entitled to recover on

the document for any breach by the other person or the performing carrier of its obligation under the document. However, to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

(b) If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person other than the issuer are received by that person, the person is subject, with respect to its own performance while the goods are in its possession, to the obligation of the issuer. The person's obligation is discharged by delivery of the goods to another person pursuant to the document and does not include liability for breach by any other person or by the issuer.

(c) The issuer of a through bill of lading or other document of title described in subsection (a) is entitled to recover from the performing carrier, or other person in possession of the goods when the breach of the obligation under the document occurred:

(1) The amount it may be required to pay to any person entitled to recover on the document for the breach, as may be evidenced by any receipt, judgment, or transcript of judgment; and

(2) The amount of any expense reasonably incurred by the issuer in defending any action commenced by any person entitled to recover on the document for the breach.

SOURCES: Codes, 1942, § 41A:7-302; Laws, 1966, ch. 316, § 7-302; Laws, 2006, ch. 527, § 17; Laws, 2007, ch. 355, § 16; Laws, 2007, ch. 381, § 16, eff from and after passage (approved Mar. 15, 2007.)

Joint Legislative Committee Note — Section 16 of ch. 355, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 16 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of Section 16 of ch. 381, Laws, 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2006 amendment rewrote the section.

The first 2007 amendment (ch. 355), redesignated former (1) through (3) as present (a) through (c); deleted “bill or other” preceding “document” throughout the section; deleted “or other document” following “to the extent that the bill” in (a); substituted “subsection (a)” for “subsection (1)” in (c); and made minor stylistic changes.

The second 2007 amendment (ch. 381), redesignated former (1) through (3) as present (a) through (c); deleted “bill or other” preceding “document” throughout the section; deleted “or other document” following “to the extent that the bill” in (a); substituted “subsection (a)” for “subsection (1)” in (c); and made minor stylistic changes throughout.

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

§ 75-7-303. Diversion; reconsignment; change of instructions.

(a) Unless the bill of lading otherwise provides, a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:

(1) The holder of a negotiable bill;

(2) The consignor on a nonnegotiable bill even if the consignee has given contrary instruction;

(3) The consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or

(4) The consignee on a nonnegotiable bill, if the consignee is entitled as against the consignor to dispose of the goods.

(b) Unless instructions described in subsection (a) are included in a negotiable bill of lading, a person to which the bill is duly negotiated may hold the bailee according to the original terms.

SOURCES: Codes, 1942, § 41A:7-303; Laws, 1966, ch. 316, § 7-303; Laws, 2006, ch. 527, § 18; Laws, 2007, ch. 355, § 17; Laws, 2007, ch. 381, § 17, *eff from and after passage* (approved Mar. 15, 2007.)

Joint Legislative Committee Note — Section 17 of ch. 355, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 17 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of Section 17 of ch. 381, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2006 amendment rewrote the section.

The first 2007 amendment (ch. 355), redesignated former (1) and (2) as present (a) and (b); in (b), substituted “subsection (a)” for “subsection (1)” and “included in” for “included on”; and made minor stylistic changes.

The second 2007 amendment (ch. 381), redesignated former (1) and (2) as present (a) and (b); redesignated former (1)(a) through (d) as present (a)(1) through (4); in (b), substituted “subsection (a)” for “subsection (1)” and “included in” for “included on”; and made minor stylistic changes.

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

§ 75-7-304. Tangible bills of lading in a set.

(a) Except as customary in international transportation, a tangible bill of lading may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(b) If a tangible bill of lading is lawfully issued in a set of parts, each of which contains an identification code and is expressed to be valid only if the

goods have not been delivered against any other part, the whole of the parts constitute one (1) bill.

(c) If a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to which the first due negotiation is made prevails as to both the document of title and the goods even if any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrender of its part.

(d) A person that negotiates or transfers a single part of a tangible bill of lading issued in a set is liable to holders of that part as if it were the whole set.

(e) The bailee is obliged to deliver in accordance with Part 4 of this chapter against the first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this manner discharges the bailee's obligation on the whole bill.

SOURCES: Codes, 1942, § 41A:7-304; Laws, 1966, ch. 316, § 7-304; Laws, 2006, ch. 527, § 19; Laws, 2007, ch. 355, § 18; Laws, 2007, ch. 381, § 18, *eff from and after passage* (approved Mar. 15, 2007.)

Joint Legislative Committee Note — Section 18 of ch. 355, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 18 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of Section 18 of ch. 381, Laws, 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2006 amendment rewrote the section.

The first 2007 amendment (ch. 355), redesignated former (1) through (5) as present (a) through (e); substituted "bill of lading may not" for "bill of lading must not" in (a); inserted "tangible" in the first sentence of (b); in the first sentence of (e), substituted "is obliged to" for "shall" following "The bailee," and inserted "of this chapter" following "Part 4"; and made minor stylistic changes.

The second 2007 amendment (ch. 381), redesignated former (1) through (5) as present (a) through (e); substituted "may not be issued" for "must not be issued" in (a); inserted "tangible" in (b); and in (e), substituted "is obliged to" for "shall," and inserted "of this chapter" following "Part 4"; and made minor stylistic changes.

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

§ 75-7-305. Destination bills.

(a) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.

(b) Upon request of any person entitled as against a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering the goods, the issuer, subject to Section 75-7-105, may procure a substitute bill to be issued at any place designated in the request.

SOURCES: Codes, 1942, § 41A:7-305; Laws, 1966, ch. 316, § 7-305; Laws, 2006, ch. 527, § 20; Laws, 2007, ch. 355, § 19; Laws, 2007, ch. 381, § 19, eff from and after passage (approved Mar. 15, 2007.)

Joint Legislative Committee Note — Section 19 of ch. 355, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 19 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of Section 19 of ch. 381, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2006 amendment, in (2), inserted “of possession or control” following “and on surrender” and “subject to Section 75-7-105” following “the issuer”; and made minor stylistic changes throughout.

The first 2007 amendment (ch. 355), redesignated former (1) and (2) as present (a) and (b).

The second 2007 amendment (ch. 381) redesignated former (1) and (2) as present (a) and (b).

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

§ 75-7-307. Lien of carrier.

(a) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. However, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, a reasonable charge.

(b) A lien for charges and expenses under subsection (a) on goods that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to those charges and expenses. Any other lien under subsection (a) is effective against the consignor and any person that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked authority.

(c) A carrier loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

SOURCES: Codes, 1942, § 41A:7-307; Laws, 1966, ch. 316, § 7-307; Laws, 2006, ch. 527, § 21; Laws, 2007, ch. 355, § 20; Laws, 2007, ch. 381, § 20, eff from and after passage (approved Mar. 15, 2007.)

Joint Legislative Committee Note — Section 20 of ch. 355, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 20 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of Section 20 of ch. 381, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever

the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2006 amendment substituted “or on the proceeds thereof in its possession for charges after the date of the carrier’s” for “for charges subsequent to the date of its” preceding “receipt” in (1); and made minor stylistic changes throughout.

The first 2007 amendment (ch. 355), redesignated former (1) through (3) as present (a) through (c); substituted “subsection (a)” for “subsection (1)” two times in (b); and made minor stylistic changes.

The second 2007 amendment (ch. 381), redesignated former (1) through (3) as present (a) through (c); substituted “subsection (a)” for “subsection (1)” twice in (b); and made minor stylistic changes.

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

§ 75-7-308. Enforcement of carrier’s lien.

(a) A carrier’s lien on goods may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The carrier has sold goods in a commercially reasonable manner if the carrier sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the carrier, subject to the terms of the bill of lading and this chapter.

(c) A carrier may buy at any public sale pursuant to this section.

(d) A purchaser in good faith of goods sold to enforce a carrier’s lien takes the goods free of any rights of persons against which the lien was valid, despite the carrier’s noncompliance with this section.

(e) A carrier may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the carrier would have been bound to deliver the goods.

(f) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(g) A carrier’s lien may be enforced pursuant to either subsection (a) or the procedure set forth in Section 75-7-210(b).

(h) A carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

SOURCES: Codes, 1942, § 41A:7-308; Laws, 1966, ch. 316, § 7-308; Laws, 2006, ch. 527, § 22; Laws, 2007, ch. 355, § 21; Laws, 2007, ch. 381, § 21, eff from and after passage (approved Mar. 15, 2007.)

Joint Legislative Committee Note — Section 21 of ch. 355, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 21 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of Section 21 of ch. 381, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2006 amendment rewrote the section.

The first 2007 amendment (ch. 355), redesignated former (1) through (8) as present (a) through (h); in the next-to-last sentence of (a), substituted “The carrier has sold goods” for “The carrier sells the goods” and “or has otherwise sold in conformity” for “or otherwise sells in conformity”; inserted “of lading” in the last sentence of (b); and in (g), substituted “pursuant to” for “in accordance with,” “subsection (a)” for “subsection (1),” and “Section 75-7-210(b)” for “Section 75-7-210(2).”

The second 2007 amendment (ch. 381), redesignated former (1) through (8) as present (a) through (h); in (a), substituted “The carrier has sold” for “The carrier sells,” and “or has otherwise sold” for “or otherwise sells”; inserted “of lading” near the end of (b); substituted “subsection (a) for “subsection (1)” and “75-7-210(b)” for “75-7-210(2)” in (g); and made a minor stylistic change.

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

§ 75-7-309. Duty of care; contractual limitation of carrier’s liability.

(a) A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods which a reasonably careful person would exercise under similar circumstances. This subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

(b) Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier’s liability may not exceed a value stated in the bill or transportation agreement if the carrier’s rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity. However, such a limitation is not effective with respect to the carrier’s liability for conversion to its own use.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the shipment may be included in a bill of lading or a transportation agreement.

SOURCES: Codes, 1942, § 41A:7-309; Laws, 1966, ch. 316, § 7-309; Laws, 2006, ch. 527, § 23; Laws, 2007, ch. 355, § 22; Laws, 2007, ch. 381, § 22, eff from and after passage (approved Mar. 15, 2007.)

Joint Legislative Committee Note — Section 22 of ch. 355, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 22 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of Section 22 of ch. 381, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2006 amendment rewrote the section.

The first 2007 amendment (ch. 355), redesignated former (1) through (3) as present (a) through (c); and made a minor stylistic change.

The second 2007 amendment (ch. 381), redesignated former (1) through (3) as present (a) through (c); and made a minor stylistic change.

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

PART 4.

WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS.

SEC.

- 75-7-401. Irregularities in issue of receipt or bill or conduct of issuer.
- 75-7-402. Duplicate receipt or bill; overissue.
- 75-7-403. Obligation of warehouse or carrier to deliver; excuse.
- 75-7-404. No liability for good faith delivery pursuant to receipt or bill.

§ 75-7-401. Irregularities in issue of receipt or bill or conduct of issuer.

The obligations imposed by this chapter on an issuer apply to a document of title even if:

- (1) The document does not comply with the requirements of this chapter or of any other statute, rule, or regulation regarding its issue, form, or content;
- (2) The issuer violated laws regulating the conduct of its business;
- (3) The goods covered by the document were owned by the bailee when the document was issued; or
- (4) The person issuing the document is not a warehouse but the document purports to be a warehouse receipt.

SOURCES: Codes, 1942, § 41A:7-401; Laws, 1966, ch. 316, § 7-401; Laws, 2006, ch. 527, § 24; Laws, 2007, ch. 355, § 23; Laws, 2007, ch. 381, § 23, eff from and after passage (approved Mar. 15, 2007.)

Joint Legislative Committee Note — Section 23 of ch. 355, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 23 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.),

also amended this section. As set out above, this section reflects the language of Section 23 of ch. 381, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2006 amendment rewrote the section.

The first 2007 amendment (ch. 355), redesignated former (a) through (d) as present (1) through (4); substituted “issue” for “issuance” in (1); substituted “its business” for “his business” in (2); and made minor stylistic changes.

The second 2007 amendment (ch. 381), redesignated former (a) through (d) as present (1) through (4); substituted “issue” for “issuance” in (1); and made minor stylistic changes.

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

§ 75-7-402. Duplicate receipt or bill; overissue.

A duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods, substitutes for lost, stolen, or destroyed documents, or substitute documents issued pursuant to Section 75-7-105. The issuer is liable for damages caused by its overissue or failure to identify a duplicate document by a conspicuous notation.

SOURCES: Codes, 1942, § 41A:7-402; Laws, 1966, ch. 316, § 7-402; Laws, 2006, ch. 527, § 25; Laws, 2007, ch. 355, § 24; Laws, 2007, ch. 381, § 24, eff from and after passage (approved Mar. 15, 2007.)

Joint Legislative Committee Note — Section 24 of ch. 355, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 24 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of Section 24 of ch. 381, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2006 amendment rewrote the section.

The first 2007 amendment (ch. 355) deleted “on its face” from the end of the last sentence; and made minor stylistic changes.

The second 2007 amendment (ch. 581), deleted “on its face” from the end of the last sentence of the section; and made minor stylistic changes.

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

§ 75-7-403. Obligation of warehouse or carrier to deliver; excuse.

(a) A bailee shall deliver the goods to a person entitled under a document of title if the person complies with subsections (b) and (c), unless and to the extent that the bailee establishes any of the following:

- (1) Delivery of the goods to a person whose receipt was rightful as against the claimant;
 - (2) Damage to or delay, loss, or destruction of the goods for which the bailee is not liable;
 - (3) Previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouse's lawful termination of storage;
 - (4) The exercise by a seller of its right to stop delivery pursuant to Section 75-2-705 or by a lessor of its right to stop delivery pursuant to Section 75-2A-526;
 - (5) A diversion, reconsignment, or other disposition pursuant to Section 75-7-303;
 - (6) Release, satisfaction, or any other fact according a personal defense against the claimant; or
 - (7) Any other lawful excuse.
- (b) A person claiming goods covered by a document of title shall satisfy the bailee's lien if the bailee so requests or the bailee is prohibited by law from delivering the goods until the charges are paid.
- (c) Unless a person claiming the goods is one against which the document of title does not confer a right under Section 75-7-503 (a):
- (1) The person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; and
 - (2) The bailee shall cancel the document or conspicuously indicate in the document the partial delivery or be liable to any person to which the document is duly negotiated.

SOURCES: Codes, 1942, § 41A:7-403; Laws, 1966, ch. 316, § 7-403; Laws, 2006, ch. 527, § 26; Laws, 2007, ch. 355, § 25; Laws, 2007, ch. 381, § 25, eff from and after passage (approved Mar. 15, 2007.)

Joint Legislative Committee Note — Section 25 of ch. 355, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 25 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of Section 25 of ch. 381, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2006 amendment substituted "A bailee shall" for "The bailee must" and "document of title if the person complies" for "document who" in (1); substituted "warehouse's" for "warehouseman's" in (1)(c); rewrote (1)(d); substituted "pursuant to Section 75-7-303" for "pursuant to the provisions of this chapter (Section 7-303) or tariff regulating such right" in (1)(e); deleted "fact affording a" following "satisfaction or any other" in (1)(f); substituted "shall" for "must" and "if" for "where" both times it appears in (2); rewrote (3); deleted former (4), which provided a definition of "person entitled under the document"; and made a minor stylistic change.

The first 2007 (ch. 355), amendment redesignated former (1) through (3), as present (a) through (c); in (a), redesignated former (1)(a) through (g) as present (a)(1) through (7) and substituted "subsections (b) and (c)" for "subsections (2) and (3)"; deleted "the

provisions of the chapter on Sales (Section 75-2-705) from the end of (a)(4); inserted “fact according a” in (a)(6)”; in (c), redesignated former (3)(a) and (b) as present (c)(1) and (2), substituted “is one against” for “is a person against” and “Section 75-7-503(a)” for “Section 75-7-503(1)” in the introductory language, and substituted “or be liable” for “or the bailee is liable” in (2); and made minor stylistic changes.

The second 2007 amendment (ch. 381), amendment redesignated former (1) through (3), as present (a) through (c); in (a), redesignated former (1)(a) through (g) as present (a)(1) through (7) and substituted “subsections (b) and (c)” for “subsections (2) and (3)”; deleted “the provisions of the chapter on Sales (Section 75-2-705)” from the end of (a)(4); inserted “fact according a” in (a)(6)”; in (c), redesignated former (3)(a) and (b) as present (c)(1) and (2), substituted “is one against” for “is a person against” and “Section 75-7-503(a)” for “Section 75-7-503(1)” in the introductory language, and substituted “or be liable” for “or the bailee is liable” in (2); and made minor stylistic changes.

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

§ 75-7-404. No liability for good faith delivery pursuant to receipt or bill.

A bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of the document of title or pursuant to this chapter is not liable for the goods even if:

(1) The person from which the bailee received the goods did not have authority to procure the document or to dispose of the goods; or

(2) The person to which the bailee delivered the goods did not have authority to receive the goods.

SOURCES: Codes, 1942, § 41A:7-404; Laws, 1966, ch. 316, § 7-405; Laws, 2006, ch. 527, § 27; Laws, 2007, ch. 355, § 26; Laws, 2007, ch. 381, § 26, eff from and after passage (approved Mar. 15, 2007.)

Joint Legislative Committee Note — Section 26 of ch. 355, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 26 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of Section 26 of ch. 381, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2006 amendment rewrote the section.

The first 2007 amendment (ch. 355), redesignated former (a) and (b) as present (1) and (2).

The second 2007 amendment (ch. 381), redesignated former (a) and (b) as present (1) and (2).

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

PART 5.

WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER.

SEC.

- 75-7-501. Rules applicable to negotiable tangible document of title; rules applicable to negotiable electronic document of title.
- 75-7-502. Rights acquired by due negotiation.
- 75-7-503. Document of title to goods defeated in certain cases.
- 75-7-504. Rights acquired in the absence of due negotiation; effect of diversion; seller's stoppage of delivery.
- 75-7-505. Indorser not a guarantor for other parties.
- 75-7-506. Delivery without indorsement; right to compel indorsement.
- 75-7-507. Warranties on negotiation or delivery of document of title.
- 75-7-508. Warranties of collecting bank as to documents.
- 75-7-509. Receipt or bill: when adequate compliance with commercial contract.

§ 75-7-501. Rules applicable to negotiable tangible document of title; rules applicable to negotiable electronic document of title.

(a) The following rules apply to a negotiable tangible document of title:

(1) If the document's original terms run to the order of a named person, the document is negotiated by the named person's indorsement and delivery. After the named person's indorsement in blank or to bearer, any person may negotiate the document by delivery alone.

(2) If the document's original terms run to bearer, it is negotiated by delivery alone.

(3) If the document's original terms run to the order of a named person and it is delivered to the named person, the effect is the same as if the document had been negotiated.

(4) Negotiation of the document after it has been indorsed to a named person requires indorsement by the named person as well as delivery.

(5) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a monetary obligation.

(b) The following rules apply to a negotiable electronic document of title:

(1) If the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Indorsement by the named person is not required to negotiate the document.

(2) If the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.

(3) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without

notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

(c) Endorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.

(d) The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill or constitute notice to a purchaser of the bill of any interest of that person in the goods.

SOURCES: Codes, 1942, § 41A:7-501; Laws, 1966, ch. 316, § 7-501; Laws, 2006, ch. 527, § 28; Laws, 2007, ch. 355, § 27; Laws, 2007, ch. 381, § 27, eff from and after passage (approved Mar. 15, 2007.)

Joint Legislative Committee Note — Section 27 of ch. 355, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 27 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of section 27 of ch. 381, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Note — In Laws of 2006, ch. 527, § 28, (1)(e), the phrase "A document duly negotiated" should read "A document is duly negotiated." The word "is" was erroneously omitted.

Amendment Notes — The 2006 amendment rewrote the section.

The first 2007 amendment (ch. 355), redesignated former (1) through (4) as present (a) through (d); in (a), substituted "negotiate the document" for "negotiate it" in the last sentence of (a)(1), substituted "as well as delivery" for "and delivery" at the end of (a)(4), and in (a)(5), inserted "is" following "A document" at the beginning and substituted "monetary obligation" for "money obligation" at the end; and made a minor stylistic change.

The second 2007 amendment (ch. 381), redesignated former (1) through (4) as present (a) through (d); in (a), substituted "negotiate the document" for "negotiate it" in the last sentence of (a)(1), substituted "as well as delivery" for "and delivery" at the end of (a)(4), and in (a)(5), inserted "is" following "A document" at the beginning and substituted "monetary obligation" for "money obligation" at the end; and made a minor stylistic change.

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

§ 75-7-502. Rights acquired by due negotiation.

(a) Subject to Sections 75-7-205 and 75-7-503, a holder to which a negotiable document of title has been duly negotiated acquires thereby:

- (1) Title to the document;
- (2) Title to the goods;
- (3) All rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and
- (4) The direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the

issuer except those arising under the terms of the document or under this chapter. In the case of a delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(b) Subject to Section 75-7-503, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by the bailee and are not impaired even if:

(1) The due negotiation or any prior negotiation constituted a breach of duty;

(2) Any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; or

(3) A previous sale or other transfer of the goods or document has been made to a third person.

SOURCES: Codes, 1942, § 41A:7-502; Laws, 1966, ch. 316, § 7-502; Laws, 2006, ch. 527, § 29; Laws, 2007, ch. 355, § 28; Laws, 2007, ch. 381, § 28, eff from and after passage (approved Mar. 15, 2007.)

Joint Legislative Committee Note — Section 28 of ch. 355, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 28 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of Section 28 of ch. 381, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2006 amendment substituted “Section 75-7-205 and 75-7-503” for “the following section and to the provisions of Section 7-205 on fungible goods” and “which” for “whom” in (1); in (1)(d), substituted “by the issuer” for “by him,” “, but in the case” for “under this chapter. In the case,” and “only upon the bailee's acceptance of the delivery order and the obligation” for “only upon acceptance and the obligation”; and rewrote (2).

The first 2007 amendment (ch. 355), redesignated former (1) and (2) as present (a) and (b); in (a)(4), divided the former first sentence into the present first and second sentences by substituting the period for “but”; and made minor stylistic changes.

The second 2007 amendment (ch. 381), redesignated former (1) and (2) as present (a) and (b); in (a)(4), divided the former first sentence into the present first and second sentences by substituting the period for “but”; and made minor stylistic changes.

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

§ 75-7-503. Document of title to goods defeated in certain cases.

(a) A document of title confers no right in goods against a person that before issuance of the document had a legal interest or a perfected security interest in the goods and that did not:

(1) Deliver or entrust the goods or any document covering the goods to the bailor or the bailor's nominee with actual or apparent authority to ship, store, or sell; with power to obtain delivery under Section 75-7-403; or with power of disposition under Sections 75-2-403, 75-2A-304(2), 75-2A-305(2), or 75-9-320 or other statute or rule of law; or

(2) Acquiesce in the procurement by the bailor or its nominee of any document.

(b) Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. That title may be defeated under Section 75-7-504 to the same extent as the rights of the issuer or a transferee from the issuer.

(c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the carrier in accordance with Part 4 of this chapter pursuant to its own bill of lading discharges the carrier's obligation to deliver.

SOURCES: Codes, 1942, § 41A:7-503; Laws, 1966, ch. 316, § 7-503; Laws, 2001, ch. 495, § 16; Laws, 2006, ch. 527, § 30; Laws, 2007, ch. 355, § 29; Laws, 2007, ch. 381, § 29, *eff from and after passage* (approved Mar. 15, 2007.)

Joint Legislative Committee Note — Section 29 of ch. 355, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 29 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of Section 29 of ch. 381, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2006 amendment rewrote the section.

The first 2007 amendment (ch. 355), redesignated former (1) through (3) as present (a) through (c); rewrote (a)(1); inserted “of this chapter” following “Part 4” in (c); and made minor stylistic changes.

The second 2007 amendment (ch. 381) redesignated former (1) through (3) as present (a) through (c); rewrote (a)(1); inserted “of this chapter” in the second sentence of (c); and made a minor stylistic change.

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

§ 75-7-504. Rights acquired in the absence of due negotiation; effect of diversion; seller's stoppage of delivery.

(a) A transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.

(b) In the case of a nonnegotiable document of title, until, but not after, the bailee receives notice of the transfer, the rights of the transferee may be defeated:

(1) By those creditors of the transferor that could treat the transfer as void under Section 75-2-402 or 75-2A-308;

(2) By a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights;

(3) By a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or

(4) As against the bailee, by good faith dealings of the bailee with the transferor.

(c) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver the goods to the consignee defeats the consignee's title to the goods if the goods have been delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and in any event defeats the consignee's rights against the bailee.

(d) Delivery of the goods pursuant to a nonnegotiable document of title may be stopped by a seller under Section 75-2-705 or a lessor under Section 75-2A-526, subject to the requirements of due notification in those sections. A bailee honoring the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

SOURCES: Codes, 1942, § 41A:7-504; Laws, 1966, ch. 316, § 7-504; Laws, 2006, ch. 527, § 31; Laws, 2007, ch. 355, § 30; Laws, 2007, ch. 381, § 30, *eff from and after passage* (approved Mar. 15, 2007.)

Joint Legislative Committee Note — Section 30 of ch. 355, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 30 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of Section 30 of ch. 381, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2006 amendment inserted “of title” following “nonnegotiable document” both times it appears; in (1), substituted “which” for “whom” and “that the” for “which his”; substituted “notice” for “notification” in (2); substituted “that” for “who” and “Section 75-2-402 or 75-2A-308” for “Section 2-402” in (2)(a); substituted “the buyer’s rights” for “his rights” in (2)(b); added new (2)(c) and redesignated former (2)(c) as present (2)(d); inserted “or a lessee in ordinary course of business” near the end of (3); and in (4), in the first sentence, substituted “Section 75-2-705 or a lessor under Section 75-2A-526” for “Section 2-705” and “in those sections” for “there provided” at the end of the sentence, and in the last sentence, substituted “that honors” for “honoring” and inserted “or lessor’s” and “or lessor.”

The first 2007 amendment (ch. 355), redesignated former (1) through (4) as present (a) through (d); inserted “of title” following “document” in (a); substituted “transfer” for

“sale” in (b)(1); in (c), inserted “the goods” twice; in (d), inserted “of the goods” following “Delivery” in the first sentence, and substituted “A bailee honoring” for “A bailee that honors” in the second sentence; and made minor stylistic changes.

The second 2007 amendment (ch. 381), redesignated former (1) through (4) as present (a) through (d); inserted “of title” following “document” in (a); substituted “transfer” for “sale” in (b)(1); inserted “the goods” twice in (c); in (d), inserted “of the goods,” and substituted “honoring” for “that honors”; and made minor stylistic changes.

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

§ 75-7-505. Indorser not a guarantor for other parties.

The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or by previous indorsers.

SOURCES: Codes, 1942, § 41A:7-505; Laws, 1966, ch. 316, § 7-505; Laws, 2006, ch. 527, § 32, eff from and after July 1, 2006.

Amendment Notes — The 2006 amendment inserted “tangible” preceding “document.”

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

§ 75-7-506. Delivery without indorsement; right to compel indorsement.

The transferee of a negotiable tangible document of title has a specifically enforceable right to have its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

SOURCES: Codes, 1942, § 41A:7-506; Laws, 1966, ch. 316, § 7-506; Laws, 2006, ch. 527, § 33, eff from and after July 1, 2006.

Amendment Notes — The 2006 amendment inserted “tangible” preceding “document”; substituted “its” for “his”; and made a minor stylistic change.

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

§ 75-7-507. Warranties on negotiation or delivery of document of title.

If a person negotiates or delivers a document of title for value, otherwise than as a mere intermediary under Section 75-7-508, unless otherwise agreed, the transferor warrants to its immediate purchaser only in addition to any warranty made in selling or leasing the goods that:

- (1) The document is genuine;
- (2) The transferor does not have knowledge of any fact that would impair the document's validity or worth; and
- (3) The negotiation or delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

SOURCES: Codes, 1942, § 41A:7-507; Laws, 1966, ch. 316, § 7-507; Laws, 2006, ch. 527, § 34; Laws, 2007, ch. 355, § 31; Laws, 2007, ch. 381, § 31, eff from and after passage (approved Mar. 15, 2007.)

Joint Legislative Committee Note — Section 31 of ch. 355, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 31 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of Section 31 of ch. 381, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2006 amendment rewrote the section.

The first 2007 amendment (ch. 355), redesignated former (a) through (c) as present (1) through (3); in the introductory language, inserted “warrants to its immediate purchaser only” and deleted “warrants to its immediate purchaser” following “leasing the goods”; and made a minor stylistic change.

The second 2007 amendment (ch. 381), redesignated former (a) through (c) as present (1) through (3); in the introductory language, inserted “warrants to its immediate purchaser only” and deleted “warrants to its immediate purchaser” following “leasing the goods”; and made a minor stylistic change.

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

§ 75-7-508. Warranties of collecting bank as to documents.

A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority even if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.

SOURCES: Codes, 1942, § 41A:7-508; Laws, 1966, ch. 316, § 7-508; Laws, 2006, ch. 527, § 35, eff from and after July 1, 2006.

Amendment Notes — The 2006 amendment inserted “of title” following “entrusted with documents”; substituted “authority even if the collecting bank or other intermediary” for “authority. This rule applies even though the intermediary”; and made a minor stylistic change.

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

§ 75-7-509. Receipt or bill: when adequate compliance with commercial contract.

Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is determined by Title 75, Chapter 2, 2A, or 5.

SOURCES: Codes, 1942, § 41A:7-509; Laws, 1966, ch. 316, § 7-509; Laws, 2006, ch. 527, § 36, eff from and after July 1, 2006.

Amendment Notes — The 2006 amendment rewrote the section.

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

PART 6.

WAREHOUSE RECEIPTS AND BILLS OF LADING MISCELLANEOUS PROVISIONS.

Sec.

- 75-7-601. Lost and missing documents of title.
- 75-7-602. Attachment of goods covered by a negotiable document.
- 75-7-603. Conflicting claims; interpleader.

§ 75-7-601. Lost and missing documents of title.

(a) If a document of title is lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with the order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant's posting security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was nonnegotiable, the court may require security. The court may also order payment of the bailee's reasonable costs and attorney's fees in any action under this subsection.

(b) A bailee that without court order delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby. If the delivery is not in good faith, the bailee is liable for conversion. Delivery in good faith is not conversion if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery which files a notice of claim within one (1) year after the delivery.

SOURCES: Codes, 1942, § 41A:7-601; Laws, 1966, ch. 316, § 7-601; Laws, 2006, ch. 527, § 37; Laws, 2007, ch. 355, § 32; Laws, 2007, ch. 381, § 32, eff from and after passage (approved Mar. 15, 2007.)

Joint Legislative Committee Note — Section 32 of ch. 355, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 32 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of Section 32 of ch. 381, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2006 amendment rewrote the section.

The first 2007 amendment (ch. 355), redesignated former (1) and (2) as present (a) and (b); inserted “security” in the second sentence of (a) following “claimant’s posting”; and made a minor stylistic change.

The second 2007 amendment (ch. 381), redesignated former (1) and (2) as present (a) and (b); inserted “security” following “claimant’s posting” in the second sentence of (a); and made a minor stylistic change.

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

§ 75-7-602. Attachment of goods covered by a negotiable document.

Unless a document of title was originally issued upon delivery of the goods by a person that did not have power to dispose of them, a lien does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or the document’s negotiation is enjoined. The bailee may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court. A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

SOURCES: Codes, 1942, § 41A:7-602; Laws, 1966, ch. 316, § 7-602; Laws, 2006, ch. 527, § 38, eff from and after July 1, 2006.

Amendment Notes — The 2006 amendment rewrote the section.

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

§ 75-7-603. Conflicting claims; interpleader.

If more than one (1) person claims title or possession of the goods, the bailee is excused from delivery until the bailee has had a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader. The bailee may assert an interpleader either in defending an action for nondelivery of the goods or by original action.

SOURCES: Codes, 1942, § 41A:7-603; Laws, 1966, ch. 316, § 7-603; Laws, 2006, ch. 527, § 39, eff from and after July 1, 2006.

Amendment Notes — The 2006 amendment substituted “until the bailee” for “until he has” and “adverse claims or to commence an action for interpleader. The bailee may assert an interpleader either in defending” for “adverse claims or to bring an action to compel all claimants to interplead and may compel such interpleader, either in defending”; and deleted “whichever is appropriate” from the end.

Cross References — For applicability to this section of the Laws of 2006, ch. 527 amendments, as amended by Laws of 2007, ch. 381, see § 75-7-701.

PART 7.

TRANSITIONAL RULES.

SEC.

75-7-701. Transitional rules.

§ 75-7-701. Transitional rules.

(a) The amendments to this chapter contained in Chapter 527, Laws of 2006, as amended by Chapter 381, Laws of 2007, apply to a document of title that is issued or a bailment that arises on or after July 1, 2006, but do not apply to: (1) a document of title that is issued or a bailment that arises before July 1, 2006, even if the document of title or bailment would be so subject if the document of title had been issued or bailment had arisen after July 1, 2006, or (2) a right of action that has accrued before July 1, 2006.

(b) A document of title issued or a bailment that arises before July 1, 2006, and the rights, obligations, and interests flowing from that document or bailment are governed by any statute amended or repealed by Chapter 527, Laws of 2006, as amended by Chapter 381, Laws of 2007, as if amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute as it existed on June 30, 2006.

SOURCES: Laws, 2006, ch. 527, § 40; Laws, 2007, ch. 355, § 33; Laws, 2007, ch. 381, § 33, eff from and after passage (approved Mar. 15, 2007.)

Joint Legislative Committee Note — Section 33 of ch. 355, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 33 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of Section 33 of ch. 381, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Note — Laws of 2006, ch. 527 amended the following sections in Chapter 7: Sections 75-7-102, 75-7-103, 75-7-104, 75-7-105, 75-7-106, 75-7-201, 75-7-202, 75-7-203, 75-7-204, 75-7-205, 75-7-206, 75-7-207, 75-7-208, 75-7-209, 75-7-210, 75-7-301, 75-7-302, 75-7-303, 75-7-304, 75-7-305, 75-7-307, 75-7-308, 75-7-309, 75-7-401, 75-7-402, 75-7-403, 75-7-404, 75-7-501, 75-7-502, 75-7-503, 75-7-504, 75-7-505, 75-7-506, 75-7-507, 75-7-508, 75-7-509, 75-7-601, 75-7-602, and 75-7-603.

Amendment Notes — The first 2007 amendment (ch. 355), redesignated former (1) and (2), as present (a) and (b); inserted “as amended by Chapter 355, Laws of 2007” following “Laws of 2006” in (a) and (b); and made a minor stylistic change.

The second 2007 amendment (ch. 381), redesignated former (1) and (2) as present (a) and (b); inserted “as amended by Chapter 381, Laws of 2007” in (a) and (b); and made a minor stylistic change.

CHAPTER 8

Uniform Commercial Code—Revised Article 8. Investment Securities

Part 1. Short Title and General Matters.....75-8-101

PART 1.

SHORT TITLE AND GENERAL MATTERS.

SEC.
75-8-102. Definitions.
75-8-103. Rules for determining whether certain obligations and interests are securities or financial assets.

§ 75-8-102. Definitions.

(a) In this chapter:

(1) “Adverse claim” means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

(2) “Bearer form,” as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

(3) “Broker” means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(4) “Certificated security” means a security that is represented by a certificate.

(5) “Clearing corporation” means:

(i) A person that is registered as a “clearing agency” under the federal securities laws;

(ii) A federal reserve bank; or

(iii) Any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.

(6) “Communicate” means to:

(i) Send a signed writing; or

(ii) Transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

(7) “Entitlement holder” means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of Section 75-8-501(b)(2) or (3), that person is the entitlement holder.

(8) “Entitlement order” means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(9) “Financial asset,” except as otherwise provided in Section 75-8-103, means:

(i) A security;

(ii) An obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(iii) Any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this chapter. As context requires, the term means either the interest itself or the means by which a person’s claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

(10) [Reserved]

(11) “Indorsement” means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

(12) “Instruction” means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

(13) “Registered form,” as applied to a certificated security, means a form in which:

(i) The security certificate specifies a person entitled to the security; and

(ii) A transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(14) “Securities intermediary” means:

(i) A clearing corporation; or

(ii) A person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(15) “Security,” except as otherwise provided in Section 75-8-103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

(i) Which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) Which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(iii) Which:

(A) Is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(B) Is a medium for investment and by its terms expressly provides that it is a security governed by this chapter.

(16) “Security certificate” means a certificate representing a security.

(17) “Security entitlement” means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5 of this chapter.

(18) “Uncertificated security” means a security that is not represented by a certificate.

(b) Other definitions applying to this chapter and the sections in which they appear are:

| | |
|-----------------------------|------------------|
| Appropriate person | Section 75-8-107 |
| Control | Section 75-8-106 |
| Delivery | Section 75-8-301 |
| Investment company security | Section 75-8-103 |
| Issuer | Section 75-8-201 |
| Overissue | Section 75-8-210 |
| Protected purchaser | Section 75-8-303 |
| Securities account | Section 75-8-501 |

(c) In addition, Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

(d) The characterization of a person, business, or transaction for purposes of this chapter does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

SOURCES: Laws, 1996, ch. 468, § 3; Laws, 2010, ch. 506, § 39, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment deleted and reserved former (a)(10), which was the definition for “good faith.”

§ 75-8-103. Rules for determining whether certain obligations and interests are securities or financial assets.

(a) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(b) An “investment company security” is a security. “Investment company security” means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(c) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this chapter, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(d) A writing that is a security certificate is governed by this chapter and not by Chapter 3, even though it also meets the requirements of that chapter. However, a negotiable instrument governed by Chapter 3 is a financial asset if it is held in a securities account.

(e) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(f) A commodity contract, as defined in Section 75-9-102(a)(15), is not a security or a financial asset.

(g) A document of title is not a financial asset unless Section 75-8-102(a)(9)(iii) applies.

SOURCES: Laws, 1996, ch. 468, § 4; Laws, 2001, ch. 495, § 17; Laws, 2006, ch. 527, § 58, eff from and after July 1, 2006.

Amendment Notes — The 2006 amendment added (g).

CHAPTER 9

Uniform Commercial Code—Secured Transactions

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PART 1.

GENERAL PROVISIONS.

SUBPART 1

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SUBPART 1.

SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS.

| | |
|-----------|---------------------------------------|
| SEC. | |
| 75-9-102. | Definitions and index of definitions. |

§ 75-9-102. Definitions and index of definitions.

(a) In this article:

(1) “Accession” means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) “Account,” except as used in “account for,” means a right to payment of a monetary obligation, whether or not earned by performance, (i) for

property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) “Account debtor” means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) “Accounting,” except as used in “accounting for,” means a record:

(A) Authenticated by a secured party;

(B) Indicating the aggregate unpaid secured obligations as of a date not more than thirty-five (35) days earlier or thirty-five (35) days later than the date of the record; and

(C) Identifying the components of the obligations in reasonable detail.

(5) “Agricultural lien” means an interest in farm products:

(A) Which secures payment or performance of an obligation for:

(i) Goods or services furnished in connection with a debtor’s farming operation; or

(ii) Rent on real property leased by a debtor in connection with its farming operation;

(B) Which is created by statute in favor of a person that:

(i) In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor’s farming operation; or

(ii) Leased real property to a debtor in connection with the debtor’s farming operation; and

(C) Whose effectiveness does not depend on the person’s possession of the personal property.

(6) “As-extracted collateral” means:

(A) Oil, gas, or other minerals that are subject to a security interest that:

(i) Is created by a debtor having an interest in the minerals before extraction; and

(ii) Attaches to the minerals as extracted; or

(B) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) “Authenticate” means:

(A) To sign; or

(B) To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) “Bank” means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) “Cash proceeds” means proceeds that are money, checks, deposit accounts, or the like.

(10) “Certificate of title” means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) “Chattel paper” means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, “monetary obligation” means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) “Collateral” means the property subject to a security interest or agricultural lien. The term includes:

(A) Proceeds to which a security interest attaches;

(B) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) Goods that are the subject of a consignment.

(13) “Commercial tort claim” means a claim arising in tort with respect to which:

(A) The claimant is an organization; or

(B) The claimant is an individual and the claim:

(i) Arose in the course of the claimant’s business or profession; and

(ii) Does not include damages arising out of personal injury to or the death of an individual.

(14) “Commodity account” means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) “Commodity contract” means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) “Commodity customer” means a person for which a commodity intermediary carries a commodity contract on its books.

(17) “Commodity intermediary” means a person that:

(A) Is registered as a futures commission merchant under federal commodities law; or

(B) In the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) “Communicate” means:

(A) To send a written or other tangible record;

(B) To transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) “Consignee” means a merchant to which goods are delivered in a consignment.

(20) “Consignment” means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) The merchant:

(i) Deals in goods of that kind under a name other than the name of the person making delivery;

(ii) Is not an auctioneer; and

(iii) Is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) With respect to each delivery, the aggregate value of the goods is One Thousand Dollars (\$1,000.00) or more at the time of delivery;

(C) The goods are not consumer goods immediately before delivery; and

(D) The transaction does not create a security interest that secures an obligation.

(21) “Consignor” means a person that delivers goods to a consignee in a consignment.

(22) “Consumer debtor” means a debtor in a consumer transaction.

(23) “Consumer goods” means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) “Consumer-goods transaction” means a consumer transaction in which:

(A) An individual incurs an obligation primarily for personal, family, or household purposes; and

(B) A security interest in consumer goods secures the obligation.

(25) “Consumer obligor” means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) “Consumer transaction” means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) “Continuation statement” means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) “Debtor” means:

(A) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) A seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) A consignee.

(29) “Deposit account” means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) “Document” means a document of title or a receipt of the type described in Section 75-7-201(b).

(31) “Electronic chattel paper” means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) “Encumbrance” means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) “Equipment” means goods other than inventory, farm products, or consumer goods.

(34) “Farm products” means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) Crops grown, growing, or to be grown, including:

(i) Crops produced on trees, vines, and bushes; and

(ii) Aquatic goods produced in aquacultural operations;

(B) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) Supplies used or produced in a farming operation; or

(D) Products of crops or livestock in their unmanufactured states.

(35) “Farming operation” means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock or aquacultural operation.

(36) “File number” means the number assigned to an initial financing statement pursuant to Section 75-9-519(a).

(37) "Filing office" means an office designated in Section 75-9-501 as the place to file a financing statement.

(38) "Filing-office rule" means a rule adopted pursuant to Section 75-9-526.

(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying Section 75-9-502(a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) [Reserved]

(44) "Goods" means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, (v) farm-raised fish produced in fresh water according to the usual and customary techniques of commercial agriculture, (vi) manufactured homes and (vii) marine vessels (herein defined as every type of watercraft used, or capable of being used, as a means of transportation on water) including both marine vessels under construction, including engines and all items of equipment installed or to be installed therein, whether such vessels are being constructed by the shipbuilder for his own use or for sale (said vessels under construction being classified as inventory within the meaning of Section 75-9-102(48)), and marine vessels after completion of construction so long as such vessels have not become "vessels of the United States" within the meaning of the Ship Mortgage Act of 1920, 46 USCS, Section 911(4), as same is now written or may hereafter be amended (said completed vessels being classified as equipment within the meaning of Section 75-9-102(33)). The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-

credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) “Governmental unit” means a subdivision, agency, department, county, parish, municipality or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) “Health-care-insurance receivable” means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided or to be provided.

(47) “Instrument” means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary endorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) “Inventory” means goods, other than farm products, which:

(A) Are leased by a person as lessor;

(B) Are held by a person for sale or lease or to be furnished under a contract of service;

(C) Are furnished by a person under a contract of service; or

(D) Consist of raw materials, work in process or materials used or consumed in a business.

(49) “Investment property” means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) “Jurisdiction of organization,” with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) “Letter-of-credit right” means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) “Lien creditor” means:

(A) A creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) An assignee for benefit of creditors from the time of assignment;

(C) A trustee in bankruptcy from the date of the filing of the petition;

or

(D) A receiver in equity from the time of appointment.

(53) “Manufactured home” means a structure, transportable in one or more sections, which, in the traveling mode, is eight (8) body feet or more in

width or forty (40) body feet or more in length, or, when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) "Manufactured-home transaction" means a secured transaction:

(A) That creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) In which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation. "Mortgage" shall mean and include a deed of trust.

(56) "New debtor" means a person that becomes bound as debtor under Section 75-9-203(d) by a security agreement previously entered into by another person.

(57) "New value" means (i) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor," except as used in Section 75-9-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under Section 75-9-203(d).

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to," with respect to an individual, means:

(A) The spouse of the individual;

(B) A brother, brother-in-law, sister, or sister-in-law of the individual;

(C) An ancestor or lineal descendant of the individual or the individual's spouse; or

(D) Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "Person related to," with respect to an organization, means:

(A) A person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) An officer or director of, or a person performing similar functions with respect to, the organization;

(C) An officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A);

(D) The spouse of an individual described in subparagraph (A), (B), or (C); or

(E) An individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C), or (D) and shares the same home with the individual.

(64) "Proceeds," except as used in Section 75-9-609(b), means the following property:

(A) Whatever is acquired upon the sale, lease, license, exchange or other disposition of collateral;

(B) Whatever is collected on, or distributed on account of, collateral;

(C) Rights arising out of collateral;

(D) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(64A) "Production-money crops" means crops that secure a production-money obligation incurred with respect to the production of those crops.

(64B) "Production-money obligation" means an obligation of an obligor incurred for new value given to enable the debtor to produce crops if the value is in fact used for the production of the crops.

(64C) "Production of crops" includes tilling and otherwise preparing land for growing, planting, cultivating, fertilizing, irrigating, harvesting and gathering crops, and protecting them from damage or disease.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to Sections 75-9-620, 75-9-621, and 75-9-622.

(67) "Public-finance transaction" means a secured transaction in connection with which:

(A) Debt securities are issued;

(B) All or a portion of the securities issued have an initial stated maturity of at least twenty (20) years; and

(C) The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or

assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) "Pursuant to commitment," with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(69) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(70) "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

(71) "Secondary obligor" means an obligor to the extent that:

(A) The obligor's obligation is secondary; or

(B) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(72) "Secured party" means:

(A) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) A person that holds an agricultural lien;

(C) A consignor;

(D) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) A person that holds a security interest arising under Section 75-2-401, 75-2-505, 75-2-711(3), 75-2A-508(5), 75-4-210, or 75-5-118.

(73) "Security agreement" means an agreement that creates or provides for a security interest.

(74) "Send," in connection with a record or notification, means:

(A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) To cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).

(75) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(76) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(77) “Supporting obligation” means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(78) “Tangible chattel paper” means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(79) “Termination statement” means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(80) “Transmitting utility” means a person primarily engaged in the business of:

(A) Operating a railroad, subway, street railway, or trolley bus;

(B) Transmitting communications electrically, electromagnetically, or by light;

(C) Transmitting goods by pipeline or sewer; or

(D) Transmitting or producing and transmitting electricity, steam, gas, or water.

(b) The following definitions in other articles apply to this article:

| | |
|---|-------------------|
| “Applicant” | Section 75-5-102 |
| “Beneficiary” | Section 75-5-102 |
| “Broker” | Section 75-8-102 |
| “Certificated security” | Section 75-8-102 |
| “Check” | Section 75-3-104 |
| “Clearing corporation” | Section 75-8-102 |
| “Contract for sale” | Section 75-2-106 |
| “Control” | Section 75-7-106 |
| “Customer” | Section 75-4-104 |
| “Entitlement holder” | Section 75-8-102 |
| “Financial asset” | Section 75-8-102 |
| “Holder in due course” | Section 75-3-302 |
| “Issuer” (with respect to a letter of credit or letter-of-credit right) | Section 75-5-102 |
| “Issuer” (with respect to a security) | Section 75-8-201 |
| “Issuer” (with respect to documents of title) | Section 75-7-102 |
| “Lease” | Section 75-2A-103 |
| “Lease agreement” | Section 75-2A-103 |
| “Lease contract” | Section 75-2A-103 |

| | |
|--|-------------------|
| "Leasehold interest" | Section 75-2A-103 |
| "Lessee" | Section 75-2A-103 |
| "Lessee in ordinary course of business" | Section 75-2A-103 |
| "Lessor" | Section 75-2A-103 |
| "Lessor's residual interest" | Section 75-2A-103 |
| "Letter of credit" | Section 75-5-102 |
| "Merchant" | Section 75-2-104 |
| "Negotiable instrument" | Section 75-3-104 |
| "Nominated person" | Section 75-5-102 |
| "Note" | Section 75-3-104 |
| "Proceeds of a letter of credit" | Section 75-5-114 |
| "Prove" | Section 75-3-103 |
| "Sale" | Section 75-2-106 |
| "Securities account" | Section 75-8-501 |
| "Securities intermediary" | Section 75-8-102 |
| "Security" | Section 75-8-102 |
| "Security certificate" | Section 75-8-102 |
| "Security entitlement" | Section 75-8-102 |
| "Uncertificated security" | Section 75-8-102 |

(c) Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

SOURCES: Former 1972 Code § 75-9-102 [Codes, 1942, § 41A:9-102; Laws, 1966, ch. 316, § 9-102; Laws, 1977, ch. 452, § 5] is now found in comparable provisions enacted at § 75-9-109 by Laws, 2001, ch. 495, § 1. Present § 75-9-102 was derived from former 1972 Code §§ 75-9-105 [Codes, 1942, § 41A:9-105; Laws, 1966, ch. 316, § 9-105; Laws, 1977, ch. 452, § 8; Laws, 1978, ch. 356, § 1; Laws, 1990, ch. 384, § 48; Laws, 1996, ch. 460, § 23; Laws, 1996, ch. 468, § 57], 75-9-106 [Codes, 1942, § 41A:9-106; Laws, 1966, ch. 316, § 9-106; Laws, 1977, ch. 452, § 9; Laws, 1996, ch. 460, § 24; Laws, 1996, ch. 468, § 58], 75-9-109 [Codes, 1942, § 41A:9-109; Laws, 1966, ch. 316, § 9-109], 75-9-115 [Laws, 1996, ch. 468, § 59], 75-9-301 [Codes, 1942, § 41A:9-301; Laws, 1966, ch. 316, § 9-301; Laws, 1977, ch. 452, § 14; Laws, 1986, ch. 343, § 1; Laws, 1996, ch. 468, § 62], and 75-9-306 [Codes, 1942, § 41A:9-306; Laws, 1966, ch. 316, § 9-306; Laws, 1977, ch. 452, § 18; Laws, 1996, ch. 468, § 67] and was enacted by Laws, 2001, ch. 495, § 1; Laws, 2002, ch. 453, § 4; Laws, 2006, ch. 527, § 59; Laws, 2007, ch. 355, § 35; Laws, 2007, ch. 381, § 35; Laws, 2010, ch. 506, § 40, eff from and after July 1, 2010.

Joint Legislative Committee Note — Section 35 of ch. 355 Laws of 2007, effective upon passage (approved March 15, 2007, at 4:20 p.m.), amended this section. Section 35 of ch. 381, Laws of 2007, effective upon passage (approved March 15, 2007, at 4:45 p.m.), also amended this section. As set out above, this section reflects the language of Section 35 of ch. 381, Laws of 2007, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The 2006 amendment added the section references for the definitions of “Control” and “Issuer” (with respect to documents of title)” in (b).

The first 2007 amendment (ch. 355), substituted “Section 75-7-201(b)” for “Section 75-7-201(2)” in (a)(30); and made minor stylistic changes.

The second 2007 amendment (ch. 381), substituted “Section 75-7-201(b)” for “Section 75-7-201(2)” at the end of (a)(30); and made minor stylistic changes.

The 2010 amendment deleted and reserved former (a)(43), which was the definition for “good faith.”

JUDICIAL DECISIONS

I. Under Current Law.

1. Account.
2. “Goods”.
3. “Farm products”.

A. Decisions Under Uniform Commercial Code.

8. “Collateral.”

I. Under Current Law.

1. Account.

Under Miss. Code Ann. § 75-4-104(3) and Miss. Code Ann. § 75-9-102(29), a customer’s line of credit possibly qualified as an account, but not as a deposit account; thus, where a 2002 customer agreement applied to depository accounts but not to a customer’s line of credit, and a 2004 customer agreements did not contain the required specific, retroactive language in the arbitration provisions, a bank could not compel the customer to arbitrate claims of tortious breach of contract and emotional distress, alleging that the bank and an insurer failed to pay benefits under a credit disability insurance policy. *AmSouth Bank v. Quimby*, 963 So. 2d 1145 (Miss. 2007).

2. “Goods”.

Scope of 11 U.S.C.S. § 503(b)(9) is limited solely to goods and advertising; therefore, a creditor was not entitled to have its claim classified as an administrative expense because the debtor’s purchase of advertising in the creditor’s phone books did not constitute a good as defined under

the plain language of U.C.C. § 9-102. In *re Deer*, — Bankr. —, 2007 Bankr. LEXIS 4676 (Bankr. S.D. Miss. June 14, 2007).

3. “Farm products”.

Miss. Code Ann. § 75-9-102 expressly contemplates a crop “to be grown” sometime in the future; the creditor’s lien here, perfected through the security instruments executed by debtors prior to 2010, extended to the balance of proceeds remaining from the 2010 sweet potato crop. Debtors’ proposed “roll over” scenario for 2011, without the consent of the creditor, provided no discernable adequate protection, as required by 11 U.S.C.S. § 363(e), for its interest in the 2010 crop proceeds. *Moore v. Regions Bank (In re Moore)*, 465 B.R. 111 (Bankr. N.D. Miss. 2011).

A. Decisions Under Uniform Commercial Code.

8. “Collateral.”

When a supplier stored equipment on a debtor’s premises, the arrangement was at best that of a bailment and was not a consignment under Miss. Code Ann. § 75-9-102(a)(20) because the evidence established that the equipment was not delivered to the debtor for the purpose of a sale. Thus, the equipment did not become part of the debtor’s inventory under Miss. Code Ann. § 75-9-102(a)(48), and a creditor’s security interest against the debtor’s inventory did not attach to it. In *re Greenline Equip., Inc.*, 390 B.R. 576 (Bankr. N.D. Miss. 2008).

§ 75-9-103. Purchase-money security interest; application of payments; burden of establishing.

JUDICIAL DECISIONS

- I. Under Current Law.
- 5. Illustrative cases.

I. Under Current Law.

5. Illustrative cases.

Bankruptcy court adopted the dual-status rule for determining how to treat a \$ 5,500 credit Chapter 13 debtors received on a vehicle they surrendered when they purchased another vehicle two years and two months before they declared bankruptcy, and found that a creditor's claim in

the amount of \$ 26,308.22 was secured in the amount of \$ 21,335.97, and unsecured in the amount of \$ 4,972.25, under 11 U.S.C.S. § 1325(a) (hanging paragraph referencing paragraph 5). The court made that determination by finding that the creditor obtained a purchase-money security interest, pursuant to Miss. Code Ann. § 75-9-103, that equaled 81.1% of the total amount financed, and multiplying the amount of the creditor's claim by .811. In re Busby, 393 B.R. 443 (Bankr. S.D. Miss. 2008).

SUBPART 2.

APPLICABILITY OF ARTICLE.

§ 75-9-109. Scope.

JUDICIAL DECISIONS

- D. Security Devices.
- 24. Assignments.

D. Security Devices.

24. Assignments.

Insurer's claim that a contractor's assignment of an application for a payment under a construction contract as collateral

for a loan that the insurer had made to the contractor was not subject to the UCC was rejected as the appellate court held that insurer contractually took a security interest by way of assignment in contractor's right to payment for construction work. St. Paul Mercury Ins. Co. v. Merchs. & Marine Bank, 882 So. 2d 766 (Miss. 2004).

PART 2.

EFFECTIVENESS OF SECURITY AGREEMENT; ATTACHMENT OF SECURITY INTEREST; RIGHTS OF PARTIES TO SECURITY AGREEMENT.

| | | |
|------------|-----------------------------------|----------|
| Subpart 1. | Effectiveness and Attachment..... | 75-9-201 |
| Subpart 2. | Rights and Duties..... | 75-9-207 |

SUBPART 1.

EFFECTIVENESS AND ATTACHMENT.

| | |
|-----------|--|
| SEC. | |
| 75-9-203. | Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites. |

§ 75-9-201. General effectiveness of security agreement.**JUDICIAL DECISIONS**

I. Under Current Law.

2. Security devices.

I. Under Current Law.**2. Security devices.**

Bank had a valid security interest in a piece of equipment under former Miss. Code Ann. 75-9-201 because the security agreement defined the term “property” as all property that was currently or later

became attached to, a part of, or resulted from the described property. Thus, even though the equipment had two implements attached, it was still a piece of secured collateral. *Cnty. Bank v. Courtney*, — So. 2d —, 2004 Miss. LEXIS 656 (Miss. June 10, 2004), opinion withdrawn by, substituted opinion at, remanded by 884 So. 2d 767, 2004 Miss. LEXIS 1321 (Miss. 2004).

§ 75-9-203. Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.

(a) A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) Except as otherwise provided in subsections (c) through (i), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) Value has been given;

(2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) One (1) of the following conditions is met:

(A) The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) The collateral is not a certificated security and is in the possession of the secured party under Section 75-9-313 pursuant to the debtor’s security agreement;

(C) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under Section 75-8-301 pursuant to the debtor’s security agreement; or

(D) The collateral is deposit accounts, electronic chattel paper, investment property, letter-of-credit rights, or electronic documents, and the secured party has control under Section 75-7-106, 75-9-104, 75-9-105, 75-9-106, or 75-9-107 pursuant to the debtor’s security agreement.

(c) Subsection (b) is subject to Section 75-4-210 on the security interest of a collecting bank, Section 75-5-118 on the security interest of a letter-of-credit issuer or nominated person, Section 75-9-110 on a security interest arising under Article 2 or 2A of Title 75, and Section 75-9-206 on security interests in investment property.

(d) A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this article or by contract:

(1) The security agreement becomes effective to create a security interest in the person's property; or

(2) The person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) The agreement satisfies subsection (b) (3) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) Another agreement is not necessary to make a security interest in the property enforceable.

(f) The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by Section 75-9-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

SOURCES: Laws, 2001, ch. 495, § 1; Laws, 2006, ch. 527, § 60, eff from and after July 1, 2006.

Amendment Notes — The 2006 amendment rewrote (b)(3)(D).

JUDICIAL DECISIONS

I. Under Current Law.

2. Attachment.

II. Under former § 75-9-203(1) through (3).

26. Priority.

I. Under Current Law.

2. Attachment.

Judgment of the district court in a case to determine ownership of cattle, granting

summary judgment for the buyer of the cattle on the ground that the apparent seller was the owner and passed title to the buyer free of a lien, was reversed and remanded, because a fact issue existed on the ownership of the apparent seller; plaintiff bank's and defendant bank's security interests properly perfected on an individual and his property, attached to the cattle only if the apparent seller was a sole proprietorship of the individual, but if the apparent seller operated as a partner-

ship or limited liability company, the individual did not have sufficient rights in the cattle to encumber them. *Peoples Bank v. Bryan Bros. Cattle Co.*, 504 F.3d 549 (5th Cir. 2007).

II. Under former § 75-9-203(1) through (3).

26. Priority.

Because under Miss. Code Ann. §§ 75-9-203, 75-9-322, the first perfected secu-

rity interest had priority, plaintiff, a receiver for the receivership entities, on behalf of the entities' creditor who filed first, had priority over a state tax lien such that defendant state taxing authority's distress warrants issued against the entities' accounts receivable were quashed. *Nabers v. Morgan*, — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 10504 (S.D. Miss. Feb. 2, 2011).

SUBPART 2.

RIGHTS AND DUTIES.

Sec.

75-9-207. Rights and duties of secured party having possession or control of collateral.

75-9-208. Additional duties of secured party having control of collateral.

§ 75-9-207. Rights and duties of secured party having possession or control of collateral.

(a) Except as otherwise provided in subsection (d), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) Except as otherwise provided in subsection (d), if a secured party has possession of collateral:

(1) Reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) The risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(3) The secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) The secured party may use or operate the collateral:

(A) For the purpose of preserving the collateral or its value;

(B) As permitted by an order of a court having competent jurisdiction;

or

(C) Except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under Section 75-7-106, 75-9-104, 75-9-105, 75-9-106 or 75-9-107:

(1) May hold as additional security any proceeds, except money or funds, received from the collateral;

(2) Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) May create a security interest in the collateral.

(d) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignee:

(1) Subsection (a) does not apply unless the secured party is entitled under an agreement:

(A) To charge back uncollected collateral; or

(B) Otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) Subsections (b) and (c) do not apply.

SOURCES: Laws, 2001, ch. 495, § 1; Laws, 2006, ch. 527, § 61, eff from and after July 1, 2006.

Amendment Notes — The 2006 amendment inserted “75-7-106” preceding “75-9-104” in (c).

§ 75-9-208. Additional duties of secured party having control of collateral.

(a) This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Within ten (10) days after receiving an authenticated demand by the debtor:

(1) A secured party having control of a deposit account under Section 75-9-104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) A secured party having control of a deposit account under Section 75-9-104(a)(3) shall:

(A) Pay the debtor the balance on deposit in the deposit account; or

(B) Transfer the balance on deposit into a deposit account in the debtor’s name;

(3) A secured party, other than a buyer, having control of electronic chattel paper under Section 75-9-105 shall:

(A) Communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(B) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) A secured party having control of investment property under Section 75-8-106(d)(2) or 75-9-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party;

(5) A secured party having control of a letter-of-credit right under Section 75-9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; and

(6) A secured party having control of an electronic document shall:

(A) Give control of the electronic document to the debtor or its designated custodian;

(B) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.

SOURCES: Former 1972 Code § 75-9-208 [Codes, 1942, § 41A:9-208; Laws, 1966, ch. 316, § 9-208, eff March 31, 1968] is now found in comparable provisions enacted at § 75-9-210 by Laws, 2001, ch. 495, § 1. Present § 75-9-208 was enacted by Laws, 2001, ch. 495, § 1; Laws, 2006, ch. 527, § 62, eff from and after July 1, 2006.

Amendment Notes — The 2006 amendment added (b)(6) and made minor stylistic changes.

PART 3.

PERFECTION AND PRIORITY.

| | | |
|------------|--|----------|
| Subpart 1. | Law Governing Perfection and Priority..... | 75-9-301 |
| Subpart 2. | Perfection..... | 75-9-308 |
| Subpart 3. | Priority..... | 75-9-317 |

SUBPART 1.

LAW GOVERNING PERFECTION AND PRIORITY.

SEC.

75-9-301. Law governing perfection and priority of security interests.

§ 75-9-301. Law governing perfection and priority of security interests.

Except as otherwise provided in Sections 75-9-303 through 75-9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in paragraph (4), while tangible negotiable documents, goods, instruments, money or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) Perfection of a security interest in the goods by filing a fixture filing;

(B) Perfection of a security interest in timber to be cut; and

(C) The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

SOURCES: Former 1972 Code § 75-9-301 [Codes, 1942, § 41A:9-301; Laws, 1966, ch. 316, § 9-301; Laws, 1977, ch. 452, § 14; Laws, 1986, ch. 343, § 1; Laws, 1996, ch. 468, § 62; is now found in comparable provisions enacted at §§ 75-9-102, 75-9-317, and 75-9-323 by Laws, 2001, ch. 495, § 1. Present § 75-9-301 was derived from former 1972 Code § 75-9-103 [Codes, 1942, § 41A:9-103; Laws, 1966, ch. 316, § 9-103; Laws, 1977, ch. 452 § 6; Laws, 1990, ch. 384, § 47; Laws, 1996, ch. 460, § 21; Laws, 1996, ch. 468, § 56 and was enacted by Laws, 2001, ch. 495, § 1; Laws, 2006, ch. 527, § 63, eff from and after July 1, 2006.

Amendment Notes — The 2006 amendment inserted “tangible” preceding “negotiable documents” in (3).

SUBPART 2.

PERFECTION.

- SEC.
- 75-9-310. When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.
- 75-9-312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money; perfection by permissive filing; temporary perfection without filing.
- 75-9-313. When possession by or delivery to secured party perfects security interest without filing.
- 75-9-314. Perfection by control.

§ 75-9-309. Security interest perfected upon attachment.

RESEARCH REFERENCES

ALR. Creation and Perfection of Security Interests in Insurance Proceeds under Article 9 of Uniform Commercial Code. 47 A.L.R.6th 347.

§ 75-9-310. When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.

(a) Except as otherwise provided in subsection (b) and Section 75-9-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) The filing of a financing statement is not necessary to perfect a security interest:

- (1) That is perfected under Section 75-9-308(d), (e), (f), or (g);
- (2) That is perfected under Section 75-9-309 when it attaches;
- (3) In property subject to a statute, regulation, or treaty described in Section 75-9-311(a);
- (4) In goods in possession of a bailee which is perfected under Section 75-9-312(d)(1) or (2);
- (5) In certificated securities, documents, goods or instruments which is perfected without filing, control or possession under Section 75-9-312(e), (f), or (g);
- (6) In collateral in the secured party's possession under Section 75-9-313;
- (7) In a certificated security which is perfected by delivery of the security certificate to the secured party under Section 75-9-313;
- (8) In deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights which is perfected by control under Section 75-9-314;
- (9) In proceeds which is perfected under Section 75-9-315; or
- (10) That is perfected under Section 75-9-316.

(c) If a secured party assigns a perfected security interest or agricultural lien, a filing under this article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

SOURCES: Former 1972 Code § 75-9-310 [Codes, 1942, § 41A:9-310; Laws, 1966, ch. 316, § 9-310] is now found in comparable provisions enacted at § 75-9-333 by Laws, 2001, ch. 495, § 1. Present § 75-9-310 was derived from former 1972 Code § 75-9-302 [Codes, 1942, § 41A:9-302; Laws, 1966, ch. 316, § 9-302; Laws, 1977, ch. 452, § 15; Laws, 1986, ch. 401, § 1; Laws, 1990, ch. 384, § 50; Laws, 1996, ch. 468, § 62 and was enacted by Laws, 2001, ch. 495, § 1; Laws, 2006, ch. 527, § 64, eff from and after July 1, 2006.

Amendment Notes — The 2006 amendment inserted “control” in (b)(5).

JUDICIAL DECISIONS

II. Under former § 75-9-302(1).

9. Purchase money security interest; consumer goods.
14. Assignment of accounts.
15. —“Significant part” distinguished.

II. Under former § 75-9-302(1).

9. Purchase money security interest; consumer goods.

Where a lender claimed a primary lien encumbering a mobile home, the purported owner of the mobile home could not use as a defense the fact that the UCC-1 Financing Statement was filed in the wrong county because, pursuant to former Miss. Code Ann. § 75-9-302, the filing of a

UCC-1 Financing Statement was not necessary. *Bank of Am. v. Wren* (In re Robinson), — Bankr. —, 2008 Bankr. LEXIS 2367 (Bankr. N.D. Miss. Aug. 26, 2008).

14. Assignment of accounts.

15. —“Significant part” distinguished.

Insurer was not exempt from the filing requirement provisions of the UCC under Miss. Code Ann. § 75-9-302 as the loan that the insurer made to a contractor represented more than one quarter of the contractor’s total outstanding accounts receivable. *St. Paul Mercury Ins. Co. v. Merchs. & Marine Bank*, 882 So. 2d 766 (Miss. 2004).

ATTORNEY GENERAL OPINIONS

The filing of financing statements required by subsection (a) of this section does not apply to the state’s lien on farm-

ers’ cotton for boll weevil assessments. Tagert, Mar. 28, 2003, A.G. Op. #03-0132.

§ 75-9-312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money; perfection by permissive filing; temporary perfection without filing.

(a) A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(b) Except as otherwise provided in Section 75-9-315(c) and (d) for proceeds:

(1) A security interest in a deposit account may be perfected only by control under Section 75-9-314;

(2) And except as otherwise provided in Section 75-9-308(d), a security interest in a letter-of-credit right may be perfected only by control under Section 75-9-314; and

(3) A security interest in money may be perfected only by the secured party's taking possession under Section 75-9-313.

(c) While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) A security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) A security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) Issuance of a document in the name of the secured party;

(2) The bailee's receipt of notification of the secured party's interest; or

(3) Filing as to the goods.

(e) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of twenty (20) days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty (20) days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) Ultimate sale or exchange; or

(2) Loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) A perfected security interest in a certificated security or instrument remains perfected for twenty (20) days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) Ultimate sale or exchange; or

(2) Presentation, collection, enforcement, renewal or registration of transfer.

(h) After the twenty-day period specified in subsection (e), (f), or (g) expires, perfection depends upon compliance with this article.

SOURCES: Former 1972 Code § 75-9-312 [Codes, 1942, § 41A:9-312; Laws, 1966, ch. 316, § 9-312; Laws, 1977, ch. 452, § 21; Laws, 1986, ch. 343, § 2; Laws, 1990, ch. 384, § 54; Laws, 1996, ch. 468, § 69; is now found in comparable provisions enacted at §§ 75-9-322 through 75-9-324 by Laws, 2001, ch. 495, § 1. Present § 75-9-312 was derived from former 1972 Code §§ 75-9-115

[Laws, 1996, ch. 468, § 59] and 75-9-304 [Codes, 1942, § 41A:9-304; Laws, 1966, ch. 316, § 9-304; Laws, 1977, ch. 452, § 16; Laws, 1990, ch. 384, § 51; Laws, 1996, ch. 460, § 25; Laws, 1996, ch. 468, § 65] and was enacted by Laws, 2001, ch. 495, § 1; Laws, 2006, ch. 527, § 65, eff from and after July 1, 2006.

Amendment Notes — The 2006 amendment inserted “or control” in (e).

§ 75-9-313. When possession by or delivery to secured party perfects security interest without filing.

(a) Except as otherwise provided in subsection (b), a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under Section 75-8-301.

(b) With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in Section 75-9-316(d).

(c) With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor’s business, when:

(1) The person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party’s benefit; or

(2) The person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party’s benefit.

(d) If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under Section 75-8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) A person in possession of collateral is not required to acknowledge that it holds possession for a secured party’s benefit.

(g) If a person acknowledges that it holds possession for the secured party’s benefit:

(1) The acknowledgment is effective under subsection (c) or Section 75-8-301(a), even if the acknowledgment violates the rights of a debtor; and

(2) Unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) To hold possession of the collateral for the secured party's benefit; or

(2) A secured party does not relinquish possession, even if a delivery under subsection (h) violates the rights of a debtor. A person to which collateral is delivered under subsection (h) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this article otherwise provides.

SOURCES: Former 1972 Code § 75-9-313 [Codes, 1942, § 41A:9-313; Laws, 1966, ch. 316, § 9-313; Laws, 1968, ch. 488, § 1; Laws, 1977, ch. 452, § 22; Laws, 1992, ch. 303, § 1; is now found in comparable provisions enacted at §§ 75-9-334 and 75-9-604 by Laws, 2001, ch. 495, § 1. Present § 75-9-313 was derived from former 1972 Code §§ 75-9-115 [Laws, 1996, ch. 468, § 59, and 75-9-305 [Codes, 1942, § 41A:9-305; Laws, 1966, ch. 316, § 9-305; Laws, 1977, ch. 452, § 17; Laws, 1990, ch. 384, § 52, 1996, ch. 460, § 26; Laws, 1996, ch. 468, § 66, and was enacted by Laws, 2001, ch. 495, § 1; Laws, 2006, ch. 527, § 66, eff from and after July 1, 2006.

Amendment Notes — The 2006 amendment inserted “tangible” preceding “negotiable documents” in (a).

§ 75-9-314. Perfection by control.

(a) A security interest in investment property, deposit accounts, letter-of-credit rights, electronic chattel paper, or electronic documents may be perfected by control of the collateral under Section 75-7-106, 75-9-104, 75-9-105, 75-9-106 or 75-9-107.

(b) A security interest in deposit accounts, electronic chattel paper, letter-of-credit rights, or electronic documents is perfected by control under Section 75-7-106, 75-9-104, 75-9-105 or 75-9-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) A security interest in investment property is perfected by control under Section 75-9-106 from the time the secured party obtains control and remains perfected by control until:

(1) The secured party does not have control; and

(2) One (1) of the following occurs:

(A) If the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) If the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) If the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

SOURCES: Former 1972 Code § 75-9-314 [Codes, 1942, § 41A:9-314; Laws, 1966, ch. 316, § 9-314 is now found in comparable provisions enacted at § 75-9-335 by Laws, 2001, ch. 495, § 1. Present § 75-9-314 was derived from 1972 Code § 75-8-106 [Laws, 1996, ch. 468, § 7] and former 1972 Code § 75-9-115; [Laws, 1996, ch. 468, § 59 and was enacted by Laws, 2001, ch. 495, § 1; Laws, 2006, ch. 527, § 67, eff from and after July 1, 2006.

Amendment Notes — The 2006 amendment inserted “or electronic documents” and “75-7-106” in (a) and (b); and made a minor stylistic change.

SUBPART 3.

PRIORITY.

SEC.

- 75-9-317. Interests that take priority over or take free of security interest or agricultural lien.
- 75-9-338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.

§ 75-9-317. Interests that take priority over or take free of security interest or agricultural lien.

(a) A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under Section 75-9-322; and

(2) Except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:

(A) The security interest or agricultural lien is perfected; or

(B) One (1) of the conditions specified in Section 75-9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, electronic documents, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Except as otherwise provided in Sections 75-9-320 and 75-9-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty (20) days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

SOURCES: Former 1972 Code § 75-9-317 [Codes, 1942, § 41A:9-317; Laws, 1966, ch. 316, § 9-317 is now found in comparable provisions enacted at § 75-9-402 by Laws, 2001, ch. 495, § 1. Present § 75-9-317 was derived from 1972 Code § 75-2A-307 [Laws, 1994, ch. 445, § 1 and former 1972 Code § 75-9-301 [Codes, 1942, § 41A:9-301; Laws, 1966, ch. 316, § 9-301; Laws, 1977, ch. 452, § 14; Laws, 1986, ch. 343, § 1; Laws, 1996, ch. 468, § 62 and was enacted by Laws, 2001, ch. 495, § 1; Laws, 2006, ch. 527, § 68, eff from and after July 1, 2006.

Amendment Notes — The 2006 amendment inserted “electronic documents” following “electronic chattel paper” in (d).

§ 75-9-322. Priorities among conflicting security interests in and agricultural liens on same collateral.

JUDICIAL DECISIONS

I. Under Current Law.

1. In general.

E. Non-Inventory Secured Purchase Money Security Interests.

28. Time of perfection.

I. Under Current Law.

1. In general.

Because under Miss. Code Ann. §§ 75-9-203, 75-9-322, the first perfected security interest had priority, plaintiff, a receiver for the receivership entities, on behalf of the entities' creditor who filed first, had priority over a state tax lien such that defendant state taxing authority's distress warrants issued against the entities' accounts receivable were

quashed. *Nabers v. Morgan*, — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 10504 (S.D. Miss. Feb. 2, 2011).

E. Non-Inventory Secured Purchase Money Security Interests.

28. Time of perfection.

Although an insurer had received an assignment from the contractor of the right to receive payments from a specific contract before an insurance company obtained a security interest in the contractor's rights to payments, the company had priority as it had perfected its security interest by complying with Mississippi law. *St. Paul Mercury Ins. Co. v. Merchs. & Marine Bank*, 882 So. 2d 766 (Miss. 2004).

§ 75-9-338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in Section 75-9-516(b)(5) which is incorrect at the time the financing statement is filed:

(1) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in

the case of tangible chattel paper, tangible documents, goods, instruments, or a security certificate, receives delivery of the collateral.

SOURCES: Laws, 2001, ch. 495, § 1; Laws, 2006, ch. 527, § 69, eff from and after July 1, 2006.

Amendment Notes — The 2006 amendment, in (2), inserted “tangible” preceding “chattel paper” and preceding “documents.”

PART 5.

FILING.

Subpart 2. Duties and Operation of Filing Office.....75-9-519

SUBPART 1.

FILING OFFICE; CONTENTS AND EFFECTIVENESS OF
FINANCING STATEMENT.

§ 75-9-501. Filing office.

JUDICIAL DECISIONS

- C. Mistake as to Place of Filing.
- 23. Actual knowledge of financing statement.
- 24. —Knowledge of security agreement distinguished.
- C. Mistake as to Place of Filing.
- 23. Actual knowledge of financing statement.
- 24. —Knowledge of security agreement distinguished.

Knowledge by an insurance company that had perfected its security interest in

its rights to a contractor’s account receivables that an insurer had also received an assignment from the same contractor to a particular payment from a construction contract was not relevant to the determination of who had a priority as knowledge by the insurance company was only relevant if the insurer had filed a financing statement, which it had not. St. Paul Mercury Ins. Co. v. Merchs. & Marine Bank, 882 So. 2d 766 (Miss. 2004).

§ 75-9-502. Contents of financing statement; record of mortgage as financing statement; time of filing financing statement.

JUDICIAL DECISIONS

I. Under Current Law.

2. Use of other than debtor's legal name.
3. After-acquired property.

I. Under Current Law.

2. Use of other than debtor's legal name.

Even though defendant bank's financing statement used the individual debtor's nickname, not his legal name, the financing statement was not seriously misleading because plaintiff bank had actual knowledge that the individual was known by the nickname used in the financing statement, and the individual was identi-

fied by both names in numerous places in plaintiff bank's own files. *Peoples Bank v. Bryan Bros. Cattle Co.*, 504 F.3d 549 (5th Cir. 2007).

3. After-acquired property.

Bank's security agreement included after-acquired property because debtor dealt in farm products, and it would have been unreasonable to assume that the bank would have intended to acquire a security interest only in debtor's property as of the date the agreement was entered. *Peoples Bank v. Bryan Bros. Cattle Co.*, 504 F.3d 549 (5th Cir. 2007).

ATTORNEY GENERAL OPINIONS

Under Revised Article 9, signatures and acknowledgments are not required elements in financing statements or related

documents. Abraham, Feb. 8, 2002, A.G. Op. #02-0032.

§ 75-9-503. Name of debtor and secured party.

JUDICIAL DECISIONS

1. Use of debtor's nickname.

Even though defendant bank's financing statement used the individual debtor's nickname, not his legal name, the financing statement was not seriously misleading because plaintiff bank had actual knowledge that the individual was known

by the nickname used in the financing statement, and the individual was identified by both names in numerous places in plaintiff bank's own files. *Peoples Bank v. Bryan Bros. Cattle Co.*, 504 F.3d 549 (5th Cir. 2007).

ATTORNEY GENERAL OPINIONS

Under Revised Article 9, signatures and acknowledgments are not required elements in financing statements or related

documents. Abraham, Feb. 8, 2002, A.G. Op. #02-0032.

§ 75-9-506. Effect of errors or omissions.

JUDICIAL DECISIONS

I. Under Current Law.

2. Use of other than debtor's legal name.

I. Under Current Law.

2. Use of other than debtor's legal name.

Even though defendant bank's financing statement used the individual debtor's nickname, not his legal name, the financ-

ing statement was not seriously misleading because plaintiff bank had actual knowledge that the individual was known by the nickname used in the financing statement, and the individual was identified by both names in numerous places in plaintiff bank's own files. *Peoples Bank v. Bryan Bros. Cattle Co.*, 504 F.3d 549 (5th Cir. 2007).

§ 75-9-516. What constitutes filing; effectiveness of filing.

ATTORNEY GENERAL OPINIONS

The secretary of state may lawfully promulgate a rule requiring that Uniform Commercial Code filings not contain any

SSN's and providing for rejection when they do. *Anderson*, July 28, 2006, A.G. Op. 06-0348.

SUBPART 2.

DUTIES AND OPERATION OF FILING OFFICE.

SEC.

75-9-525. Fees.

§ 75-9-525. Fees.

(a) Except as otherwise provided in subsection (e), the fee for filing and indexing a record under this part, other than an initial financing statement of the kind described in subsection (b) is the amount specified in subsection (c), if applicable, plus:

(1) Ten Dollars (\$10.00) if the record is communicated in writing and is in the standard form prescribed by the Secretary of State;

(2) Thirteen Dollars (\$13.00) if the record is communicated in writing and is not in the standard form prescribed by the Secretary of State; and

(3) Eight Dollars (\$8.00) if the record is communicated by another medium authorized by filing-office rule.

(b) Except as otherwise provided in subsection (e), the fee for filing and indexing an initial financing statement of the following kind is the amount specified in subsection (c), if applicable, plus:

(1) Thirteen Dollars (\$13.00) if the financing statement indicates that it is filed in connection with a public-finance transaction;

(2) Ten Dollars (\$10.00) if the financing statement indicates that it is filed in connection with a manufactured-home transaction.

(c) Except as otherwise provided in subsection (e), if a record is communicated in writing, the fee for each additional debtor name more than one (1) required to be indexed is Four Dollars (\$4.00).

(d) The fee for responding to a request for information from the filing office, including for issuing a certificate showing whether there is on file any financing statement naming a particular debtor, is:

(1) Five Dollars (\$5.00) if the request is communicated in writing on the standard form prescribed by the Secretary of State;

(2) Ten Dollars (\$10.00) if the request is communicated in writing and is not in the standard form prescribed by the Secretary of State;

(3) Three Dollars (\$3.00) if the request is communicated by another medium authorized by filing-office rule; and

(4) An additional fee of Two Dollars (\$2.00) shall be paid by the requesting party for each financing statement listed on the filing officer's certificate, the aggregate of which shall be billed to the requesting party at the time the filing officer's certificate is issued.

(e) This section does not require a fee to the chancery clerk with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under Section 75-9-502(c). However, the recording and satisfaction fees to the chancery clerk that otherwise would be applicable under Section 25-7-9 to the record of the mortgage apply.

SOURCES: Derived from former 1972 Code § 75-9-403 [Codes, 1942, § 41A:9-403; Laws, 1966, ch. 316, § 9-403; Laws, 1977, ch. 452, § 26; Laws, 1978, ch. 401, § 8; Laws, 1979, ch. 369; Laws, 1985, ch. 381, § 1; Laws, 1987, ch. 373; Laws, 2001, ch. 495, § 1; Laws, 2006, ch. 309, § 21, eff from and after passage (approved Feb. 21, 2006.)

Amendment Notes — The 2006 amendment deleted the former second version of the section, which was to be effective from and after December 31, 2007.

ATTORNEY GENERAL OPINIONS

Until December 31, 2007, the fee for filing a UCC 3 Termination Statement on the standard form (both the national form and the Mississippi Secretary of State

approved form) is \$10.00 and \$13.00 if a nonstandard form is used. Abraham, Feb. 8, 2002, A.G. Op. #02-0032.

PART 6.

DEFAULT.

Subpart 1. Default and Enforcement of Security Interest.....75-9-601

SUBPART 1.

DEFAULT AND ENFORCEMENT OF SECURITY INTEREST.

SEC.

75-9-601. Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.

§ 75-9-601. Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.

(a) After default, a secured party has the rights provided in this part and, except as otherwise provided in Section 75-9-602, those provided by agreement of the parties. A secured party:

(1) May reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) A secured party in possession of collateral or control of collateral under Section 75-7-106, 75-9-104, 75-9-105, 75-9-106 or 75-9-107 has the rights and duties provided in Section 75-9-207.

(c) The rights under subsections (a) and (b) are cumulative and may be exercised simultaneously.

(d) Except as otherwise provided in subsection (g) and Section 75-9-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) The date of perfection of the security interest or agricultural lien in the collateral;

(2) The date of filing a financing statement covering the collateral; or

(3) Any date specified in a statute under which the agricultural lien was created.

(f) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this chapter.

(g) Except as otherwise provided in Section 75-9-607(c), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

SOURCES: Derived from former 1972 Code § 75-9-501 [Codes, 1942, § 41A:9-501; Laws, 1966, ch. 316, § 9-501; Laws, 1977, ch. 452, § 32] and enacted by Laws, 2001, ch. 495, § 1; Laws, 2006, ch. 527, § 70, eff from and after July 1, 2006.

Amendment Notes — The 2006 amendment inserted “75-7-106” preceding “75-9-104” in (b); and substituted “chapter” for “article” at the end of (f).

JUDICIAL DECISIONS

I. Under Current Law.

5. Repossession.

I. Under Current Law.

5. Repossession.

Where a judge breached the peace during the repossession of an automobile jointly owned by the judge's wife and mother-in-law, his conduct violated Miss.

Code Ann. § 75-9-601(a); the judge blocked the tow truck's travel and attempted to use his office to intimidate officers at the scene. Pursuant to Miss. Const. Art. 6, § 177A, the Supreme Court of Mississippi suspended the judge for 180 days without compensation. *Miss. Comm'n on Judicial Performance v. Osborne*, 977 So. 2d 314 (Miss. 2008).

§ 75-9-609. Secured party's right to take possession after default.

JUDICIAL DECISIONS

I. Under Current Law.

1. Breach of peace.

I. Under Current Law.

1. Breach of peace.

Where a judge breached the peace during the repossession of an automobile jointly owned by the judge's wife and mother-in-law, his conduct violated Miss. Code Ann. § 75-9-609(a)(1),(b)(2); the judge blocked the tow truck's travel and attempted to use his office to intimidate officers at the scene. Pursuant to Miss. Const. Art. 6, § 177A, the Supreme Court of Mississippi suspended the judge for 180 days without compensation. *Miss. Comm'n on Judicial Performance v. Osborne*, 977 So. 2d 314 (Miss. 2008).

Summary judgment was properly granted to a creditor and others in a case

arising from the repossession of a car from the parents of a deceased debtor because such action was justified under Miss. Code Ann. § 75-9-609 since there was no breach of the peace; the persons repossessing the car were invited in, and a mother did not feel threatened. *Mullen v. Am. Honda Fin. Corp.*, 952 So. 2d 309 (Miss. Ct. App. 2007).

Repossessor was not “in the process” of repossession for the purposes of recovering damages for breaching the peace when no one was present when the equipment was removed from the debtor's property and any confrontation that took place occurred 57 miles away on a state highway when the debtor confronted the reposessor. *Ellis Contr., Inc. v. Komatsu Fin.*, 906 So. 2d 805 (Miss. Ct. App. 2004).

SUBPART 2.

NONCOMPLIANCE WITH ARTICLE.

§ 75-9-625. Remedies for secured party's failure to comply with article.

JUDICIAL DECISIONS

I. Under Current Law.

5. Repossession.

I. Under Current Law.

5. Repossession.

Where a judge breached the peace during the repossession of an automobile jointly owned by the judge's wife and mother-in-law, his conduct violated Miss.

Code Ann. § 75-9-625; the judge blocked the tow truck's travel and attempted to use his office to intimidate officers at the scene. Pursuant to Miss. Const. Art. 6, § 177A, the Supreme Court of Mississippi suspended the judge for 180 days without compensation. Miss. Comm'n on Judicial Performance v. Osborne, 977 So. 2d 314 (Miss. 2008).

PART 7.

TRANSITION.

SEC.

75-9-707. Amendment of pre-effective-date financing statement.

§ 75-9-707. Amendment of pre-effective-date financing statement.

(a) In this section, "pre-effective-date financing statement" means a financing statement filed before January 1, 2002.

(b) After January 1, 2002, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Part 3. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Except as otherwise provided in subsection (d), if the law of this state governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after January 1, 2002 only if:

(1) The pre-effective-date financing statement and an amendment are filed in the office specified in Section 75-9-501;

(2) An amendment is filed in the office specified in Section 75-9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies Section 75-9-706(c); or

(3) An initial financing statement that provides the information as amended and satisfies Section 75-9-706(c) is filed in the office specified in Section 75-9-501.

(d) If the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under Section 75-9-705(d) and (f) or 75-9-706.

(e) Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this state may be terminated after January 1, 2002 by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies Section 75-9-706(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Part 3 as the office in which to file a financing statement.

SOURCES: Laws, 2001, ch. 495, § 1, eff from and after Jan. 1, 2002.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in (b). The number “3” was added following “Part” at the end of the first sentence and the subsection number “(3)” was deleted preceding “However” at the beginning of the second sentence so that “... as provided in Part. (3) However, the effectiveness ...” now reads “... as provided in Part 3. However, the effectiveness.” The Joint Committee ratified the correction at its August 5, 2008, meeting.

ATTORNEY GENERAL OPINIONS

Under Revised Article 9, the intent of the Legislature was to limit the UCC filings in the chancery clerk’s office to only those filings related to real estate fixtures, timber to be cut and as-extracted collateral (minerals) or termination of pre-effective date financing statements; thus, termination statements on filings of financing statements made before January 1, 2002 should be filed with the appropriate

chancery clerk’s office, but the filing of other UCC 3s-assignments, continuations, amendments, releases and other filings related to instruments on file in the clerk’s office is prohibited, unless those instruments involve the real estate related filings described in § 75-9-501. Abraham, Feb. 8, 2002, A.G. Op. #02-0032.

CHAPTER 10

Uniform Commercial Code—Effective Date and Repealer

SEC.
75-10-104. Repealed

§ 75-10-104. Repealed.

Repealed by Laws, 2006, ch. 527, § 71, effective July 1, 2006.

Editor’s Note — Former § 75-10-104 was entitled: “Laws not repealed.”

Laws of 2006, ch. 527, § 71 provides:

“SECTION 71. Section 75-10-104, Mississippi Code of 1972, which provides that Title 75, Chapter 7, on documents of title does not repeal or modify other laws concerning titles and bailment, is repealed because the substance thereof has been incorporated in Section 75-7-103(2).”

CHAPTER 12

Uniform Electronic Transactions Act

§ 75-12-1. Short title.

ATTORNEY GENERAL OPINIONS

A voice record created or adopted by a person may constitute an “electronic signature” pursuant to the Uniform Electronic Transactions Act. Bearman, Apr. 19, 2002, A.G. Op. #02-0161.

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